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OVERSIGHT OF THE MINE SAFETY AND HEALTH ADMINISTRATION

HEARING

BEFORE THE

COMMITTEE ON LABOR AND HUMAN RESOURCES UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

EXAMINING ACTIVITIES OF THE MINE SAFETY AND HEALTH ADMINISTRATION

SEPTEMBER 25, 1986

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OVERSIGHT OF THE MINE SAFETY AND HEALTH ADMINISTRATION

THURSDAY, SEPTEMBER 25, 1986

U.S. SENATE,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, DC.

The committee met at 2:17 p.m., pursuant to call, in room SD-430, Dirksen Senate Office Building, Senator Orrin Hatch (chairman) presiding.

Present: Senators Hatch, Metzenbaum, Simon, Grassley, Dodd, and Kennedy.

OPENING STATEMENT OF SENATOR HATCH

The CHAIRMAN. The committee will come to order.

I am glad to begin this hearing today, and I am particularly happy to have my two Democratic colleagues here because I am going to—Senator Simon requested this hearing and I am going to turn the gavel over to you, Senator Simon, because I have got to be gone, and we have that understanding and I trust that you will take care of this hearing and I know that you will treat everybody fairly. I know that Senator Metzenbaum will also. Since you are more senior, I will be happy to turn it over to you, Howard, but we have our agreement.

Senator METZENBAUM. There is no problem in turning it over to Senator Simon.

The CHAIRMAN. All right. I did not think you would have.

Today, the Committee on Labor and Human Resources is meeting to conduct an oversight hearing on Federal mine safety enforcement programs. Concerns have been raised regarding the quality of inspections currently being conducted by the Mine Safety and Health Administration and the accuracy of accident and injury reports submitted to this agency.

In addition, I know several of my colleagues intend to address issues concerning safety standards in small mines. We are fortunate to have as witnesses today representatives from the Government Accounting Office, the Mine Safety and Health Administration, the Federal Mine Safety and Health Review Commission, the American Mining Congress, and the United Mine Workers.

I want to thank the witnesses in advance for attending and for their cooperation with the committee in preparing for this particular hearing.

Several of my colleagues have also expressed an interest in receiving testimony from the Mine Safety and Health Review Com-

mission. Although the Commission is not a part of the Department of Labor and is not related to or controlled by the Mine Safety and Health Administration, it does play a critical role in mine safety enforcement, therefore we are grateful that the Chairman of the Review Commission, Mr. Ford B. Ford, is here and is with us today to answer questions from the committee members. We admire Mr. Ford and we welcome you once again to the committee. We are happy to have you here.

I have asked the witnesses in advance not to use today's hearing to address issues involving the tragic Wilberg Mine disaster. As I have stated before, I intend to hold joint hearings with the House when the investigation of the disaster is complete and feel that it really would be inappropriate at this time to attempt to discuss the disaster before the agency itself had an opportunity to issue its findings.

Mr. Zegeer, I appreciate all you have done to keep us informed about your investigation and hope that you will be able to complete your efforts as expeditiously as possible, and I believe that will be well on its way before this week is out.

As with all aspects of the Government, I expect that the hearing today will indicate areas where there is room for improvement, and I hope that constructive suggestions will be made. One hearing may not provide sufficient time to address all of the issues involved, but by working with the Secretary of Labor and members of the MSHA Review Commission who are dedicated to enforcing the law, I am confident we can do a better job of protecting the health and lives of America's mineworkers.

I think this is a very important hearing. I want to commend Senator Simon for his work in helping to put it together and for calling for it. I am sorry that I have not had it sooner than today, but as I think everybody knows, I have got about all on my plate I can handle right now, including the drug bill which is about ready to hit the floor.

At this point we will insert the opening statements of Senators Kennedy and Grassley into the record.

OPENING STATEMENT OF SENATOR KENNEDY

Senator KENNEDY. Today the Senate Labor and Human Resources Committee will exercise its power and its duty to investigate the enforcement of the Nation's mine safety laws. This Nation has long had a commitment to protect its miners from the ancient dangers of collapsed roofing, poison gas, and the new danger of electrocution.

Those who make their living by pulling wealth and energy from the ground deserve the best protection that we can give them. We have known for a long, long time that an unregulated mining industry will take needless chances with the lives of miners. And we have known for a long, long time how to prevent needless death, crippling injury, and debilating disease in the mines.

But recent evidence has been unearthed from the mines. That evidence suggests that this Nation's commitment to the enforcement of the mine safety laws has been undermined by a lax atti-

tude and a solicitude for industry that does not befit this country's commitment to mine safety.

We have found a poor record of enforcement. We have found a preposterous policy for the punishment of violations. And we have found a dangerous disregard for the creations of regulations that could save hundreds of lives. Today, we will unearth some of these facts. By bringing these truths out of the mines and into the light, we hope to hasten the day when this country will again affirm its commitment that the coal this Nation needs will not be stained by the blood of miners and washed by the tears of their wives and children.

OPENING STATEMENT OF SENATOR GRASSLEY

Senator GRASSLEY. The Mine Safety and Health Administrator is responsible for health and safety in the Nation's mines. It carries out a wide range of activities, all of which are aimed at preventing and reducing mine accidents and occupational diseases in the mining industries. Mineworkers have every right to expect a safe and healthy work environment, and taxpayers have every right to expect that MSHA will carry out its duties effectively.

The oversight role is an important role of this committee. While MSHA has a duty to effectively carry out its mandate, this committee has a duty to support, assist, and—if it becomes necessary—prod MSHA into operating effectively as a guarantor of safety in this Nation's mines.

There have been complaints of late that MSHA's performance is suspect in the quality of MSHA inspections and in underreporting of accidents. I understand that the General Accounting Office has reviewed MSHA's performance in those areas. I look forward to reviewing the GAO's testimony today, and I trust that this report will be carefully reviewed by MSHA. I trust also that this committee will consider the information that is presented today and will assist MSHA to make any needed corrections.

The CHAIRMAN. With that, I will turn to Senator Metzenbaum and Senator Simon, if you could come up here, I would appreciate it if you would handle the gavel.

Senator SIMON [presiding]. Senator Metzenbaum.

OPENING STATEMENT OF SENATOR METZENBAUM

Senator METZENBAUM. Thank you, Mr. Chairman. I am very pleased that you saw fit to ask for this hearing. You know I joined with you subsequent to your asking for it, because I think it is a very important hearing. I think it deals with the whole issue of mine safety in this country. Although it is the second to the last week of the session, I hope we are getting into a subject that is of major concern, a subject that fits in with the GAO report.

The opening sentence of the Mine Safety and Health Act declares unequivocally that the first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource, the miner.

For nearly two decades, this law has meant a strong commitment to the safety and health of our Nation's miners. Tragically, the

Reagan administration has welched on that commitment and endangered the lives of thousands of miners in this country.

MSHA has failed to perform almost 40 percent of the metal and nonmetal mine inspections required by law. Further, there are serious questions about the quality of those inspections actually taking place.

MSHA also has failed shamefully to enforce its own accident and injury reporting requirements. One coal mine in Ohio had over 600 unreported lost time accidents. For this egregious misconduct, what did MSHA do? MSHA assessed a fine of $60—$60 for 600 unreported accidents.

If the administration does not put a higher value on the health and safety of our miners, we in the Senate must. We owe those miners and their families the full protection of the laws, not a watered-down version of that protection.

Because of MSHA's dismal recent record in the areas of effective mine inspection and accurate injury reporting, I hope to see both areas addressed at this oversight hearing. It is significant that when we provided additional moneys for additional mine inspectors, MSHA did not see fit to use the funds for the purposes intended.

At the same sime, there are other health and safety issues of great importance to the miners of this country. No matter which party is in control of the Senate, I hope and expect that these aspects of MSHA policymaking will be taken up at additional oversight hearings early in the next session. I expect to join with my colleague from Illinois as well as others in the United States Senate who have strong concerns and feelings that miners of this country are owed all of the protection that the law could possibly provide and all of the effective administrative leadership that the agency can provide.

We all know of the tragic mine accident that occurred in South Africa not many days ago. We cannot afford a similar kind of accident in our own country. Our laws and the previous acts of Congress have indicated strongly and clearly that we expect to provide protection for miners. Regrettably, I am not satisfied that that agency charged with the responsibility of enforcing the law has lived up to its obligation.

I thank you, Mr. Chairman.

Senator SIMON. I thank you, Senator Metzenbaum. Let me express my appreciation also to the chairman for having the hearing. And let me add that I join Senator Metzenbaum in requesting this. He has been a great leader in this and I am pleased to follow his leadership.

Let me just add that I am even more pleased to see him here because his presence means that his wife Shirley is doing very well, otherwise he would not be here.

Senator METZENBAUM. Thank you very much.

Senator SIMON. I recall some years ago that we had a hearing on mine safety and Secretary of Labor Donovan was here and when I pushed him he acknowledged there was a relationship between inspections taking place and the fatalities in the mines, and we had temporarily an increase and an improvement in the situation.

Let me just read a little bit from a memo from William Blakey of my staff, on where we are today. According to the United Mine Workers, 46 coal miners were killed in 1984 in mines employing 50 or fewer miners, and 52 were killed in 1985; 27 miners—well, I will not go through all the details here—but a little more than 50 percent of the deaths occurred at work sites where about 10 percent of the work force earned a living.

On October 21, 1985, GAO found in a report entitled, "Strong Leadership Needed To Improve Management at the Department of Labor," it reported the following problems:

One, only about 60 percent of the mandatory inspections were being done; two, an insufficient field inspection staff; three, staffing imbalances among district offices; four, substantial inspector time spent on other activities; and, five, inadequate information system.

On the lack of inspectors, these figures are—again, I am going to read from my staff report—from fiscal years 1980 to 1984, the number of metal/nonmetal mines in operation dropped from 14,341 to 13,100, a 9-percent decrease, according to MSHA records. However, the number of inspectors during the same time period dropped from 541 to 323, a decrease of 40 percent.

Regular inspections for surface and underground mines in the same period decreased from 18,218 to 12,396, a decrease of 32 percent. Well, there is additional information. I think all of this is ample cause for serious concern by those of us in the Senate and by the Department of Labor and by the American people who are concerned about mine safety. This information provides some background for this hearing today.

Our first witness today is Mr. William J. Gainer, the Associate Director of Human Resources Division of the General Accounting Office. He is here to present the preliminary results of the study currently under way concerning mine safety issues.

Mr. Gainer, we will call on you. Senator Metzenbaum, if you will excuse me for just a few minutes, I have some people out here I am supposed to see and you can take over.

Senator METZENBAUM [presiding]. Thank you.

Mr. Gainer.

STATEMENT OF WILLIAM J. GAINER, ASSOCIATE DIRECTOR, HUMAN RESOURCES DIVISION, GENERAL ACCOUNTING OFFICE; ACCOMPANIED BY STEVEN HUNTER AND STEPHEN BACKHUS

Mr. GAINER. Thank you, Mr. Chairman and Senator Metzenbaum.

We are very pleased to be here today to discuss preliminary results of our study on mine safety. My testimony today will focus on the mechanisms that MSHA told us it uses to assess and ensure the quality of mine inspections and verify the accuracy and completeness of accident and injury data reported to them.

To consider inspection quality, we did not attempt to make independent judgments as to the quality of inspections but, rather, we looked at the system MSHA uses to ensure that those quality inspections occur. To do so, we gathered and analyzed data from MSHA and mine operators and other sources, and we spoke with

many people, including MSHA headquarters and field officials, mine inspectors, operators, and the United Mine Workers.

Regarding accident and injury reporting, we also obtained data from workmen's compensation records in two States in order to test the completeness of the reporting that is done currently under the MSHA accident reporting system.

Our study in total covers MSHA activities in Colorado, Kentucky, Ohio, and Pennsylvania, and the work was performed between February and September 1986. I should say that what you asked us to do was a limited survey of a number of locations to get some clear indicators, though somewhat anecdotal, of what is going on out there behind the statistics that MSHA reports.

The first topic I would like to discuss is the increase in mandatory inspections. At this committee's urging, MSHA has placed greater emphasis on completing mandated regular inspections and has made some significant progress. In fiscal year 1984, MSHA completed only about 60 percent of its inspections in the metal/nonmetal area, as was noted by Senator Simon.

For fiscal year 1985 and the first 9 months of this year, those statistics have increased to 89 and 96 percent of the required inspections. Since that earlier shortfall was concentrated in metal/nonmetal, much of what I have to say today will focus on that kind of mine.

Now, MSHA attributes the more recent increase in inspection coverage to better use of its resources, establishing performance incentives for district managers, and updating its management information system to reflect an accurate mine inventory. Comparison of fiscal 1985 and 1986 resource allocations does show that time spent on mandatory inspections in metal and nonmetal mines has increased about 31 percent. On the other hand, time spent on other enforcement activities has decreased by about 18 percent. Total enforcement time, which includes mandatory inspections as well as the other enforcement activities, increased by 20 percent, while overall the time spent on each mandatory inspection has not changed substantially.

These statistics are summarized in table 1 of my prepared statement.

Senator METZENBAUM. I did not hear what you just said.

Mr. GAINER. Those statistics are summarized in table 1 of my prepared statement.

Now, to look behind those numbers, we visited three metal and nonmetal field offices and discussed with inspectors and where possible their supervisors whether the increased emphasis on completing mandated inspections had affected their ability to perform quality inspections.

In one of these offices, in Pittsburgh, inspectors told us that it was difficult to complete the required number of inspections, but they felt that they were still providing quality inspections in all areas. Inspectors and supervisors in the Denver field office said that the quality of their work had not been adversely affected either. However, at the time of our visit this particular office had two more inspectors than its staffing authorization called for.

In Newark, OH, inspectors expressed a different view. All seven inspectors there expressed concern that the emphasis on complet-

ing required inspections had sometimes forced them to compromise the quality of their inspections and other activities. As a result, they believe that the safety and health of miners may be in jeopardy. I will give you an example.

One inspector said that he has reduced the time spent on regular inspections at some mines by not thoroughly inspecting all electrical equipment. At one large mine he cited, he said it would take him 3 weeks to complete the inspection if he checked all the electrical equipment. Rather, he is now taking approximately 1 week to complete this inspection.

At the time of our work, the Newark office was without a supervisor and was short two inspectors. I believe MSHA has taken steps to fill those positions since then.

In terms of MSHA's quality assurance system, we talked to the officials at MSHA both in Washington and in the field and asked them what they did to enforce the quality of their inspection process. They cited a number of things: The training and experience of their inspectors, supervisory site visits while inspections are being performed, periodic program evaluation, and the agency's management information system.

After studying each of these mechanisms, we concluded that although portions of this system are or could be important elements of a quality assurance system, they currently are inadequate for the agency to monitor and draw conclusions on the quality of all their mandatory regular mine inspections.

For example, we found that inspectors are well trained and appear to be highly motivated and have the needed skills to do their work. On the frequency of supervisory site visits, however, we found that the extent of documentation describing supervisory observations vary substantially. In some cases, it provides a good basis for judging inspection quality; in other cases it is not adequate. MSHA does not require onsite visits at this time for its inspectors by its inspection supervisors. We believe this is an area that could be strengthened.

In the metal/nonmetal administration, they conduct evaluations of district offices every 3 years. In part, these evaluate inspector performance. The coal administration, however, has no similar evaluation policy which explicitly addresses inspection quality. Again, we believe this is a procedure which could be extended agencywide and which could occur more frequently with positive effect.

As regards their management information system, which was also cited as a quality assurance measure, this system does generate a large number of data and information which can be used by managers at all levels in monitoring inspection activity. This system, however, in and of itself cannot tell you anything about the quality of individual inspections.

On accident and injury reporting, I would like to make just a few points. Under the 1977 act, the Secretary of Labor has promulgated regulations establishing a common system of mandatory recordkeeping for mining accidents and injuries. Information on accidents and injuries forms the basis for many important statistical analyses for tracking the effectiveness of the health and safety programs at MSHA, and as a measure of industry safety and health. Our pre-

liminary analysis shows that the mechanisms which MSHA uses to verify the accuracy of accident and injury data do not fully assess the extent to which mining companies are reporting required incidents. An agency analysis of compliance audits, which are audits done to see the extent that underreporting occurs, showed that 10 to 13 percent of all reportable accidents and injuries are not reported; but for those injuries—the more serious injuries—which cause lost work days, they found about 9 percent underreporting.

We did an analysis as a cross-check limited to lost work day claims filed with two State workers compensation offices because we believed that that might be a fruitful way which is not commonly used by MSHA to check accident reporting. Using this single technique, we found in these two States, that at least 13 percent of reportable lost day accidents or incidents at selected firms had not been reported to MSHA. We believe, therefore, that these workers compensation data provide a potential for the agency to strengthen its means of verifying statistics reported by mine operators.

Mr. Chairman, that concludes my prepared statement. My colleagues and I would be happy to answer any questions that you or Senator Metzenbaum might have at this time.

Senator SIMON [presiding]. Could you identify for the record the two people who are with you?

Mr. GAINER. Yes. On my left is Steve Hunter, who managed this job in the field and is from our Cincinnati regional office, and on my right is Steve Backhus, who directs the work of the General Accounting Office in the Labor Department.

Senator SIMON. Senator Metzenbaum.

Senator METZENBAUM. Mr. Gainer, first let me ask you a question. You have now made this analysis, a pretty thorough study. You have made a number of critiques. I would ask you on overall evaluation of the MSHA Program, on a scale of 1 to 10, what kind of a grade would you give them?

Mr. GAINER. The impressions that I have gathered from our people in the field and the data that we collected indicates that MSHA does a good job in an awful lot of ways. They would probably come in someplace around a seven or eight, but there are a lot of things that we found in their quality assurance system and the things that they said were entailed in their quality assurance system where there are problems. So I would say that, even though I rate them fairly high compared to some kinds of Government inspection activities, the opportunities for improvement, given the importance of mine safety to miners, warrants some further attention.

Senator METZENBAUM. If you had a brother who was thinking of going into the mines, do you feel that you could say to him with some reasonable assurance I think it is pretty safe to go into any American mine today?

Mr. GAINER. I think if that is the way he had to make his living——

Senator METZENBAUM. Pardon?

Mr. GAINER. I think if that is the way he had to make his living, I would have to tell him that he would probably would want to be with one of the larger companies, one that had a good accident his-

tory, and he would probably want to avoid small mines. I would still tell him that he would be safer working with the General Accounting Office. [Laughter.]

Senator METZENBAUM. Now, MSHA may answer your criticism by stating that a decentralized agency should not prescribe too much from the main office. Would that be a fair response to your finding of inadequate quality assurance?

Mr. GAINER. I really do not believe so. I would have to agree with MSHA that, given the nature of the business they do, they have to rely on their inspectors and their supervisors to make an awful lot of judgments. Mine safety is not completely a science. There is a lot of art to knowing when it is safe and when it is not safe down there in the mine, but that does not mean that the agency cannot have a standard set of policies and procedures to ensure the quality of mine inspections. And as I said earlier, we found a number of areas where that system does not seem to be as good as it could be.

Senator METZENBAUM. You found that mine operators attributed their underreporting to administrative errors or oversights. Do other factors such as a low fine of $20 for failing to report play any role in their underreporting?

Mr. GAINER. Well, I should caution that the penalty system was not an explicit subject of our study, but in the course of talking to more than 150 people in the mining industry, including inspectors and their supervisors and mine operators, among the inspectors and union people that issue did come up frequently.

Although MSHA can cite much higher fines under circumstances where they think that underreporting is willful, the fact of the matter is that in many cases where there is substantial underreporting, the fine is only $20 or $20 per instance and I just do not believe that that could serve as much of a deterrent to underreporting. It probably costs a lot more than $20 to adequately document an accident and report it to MSHA.

Senator METZENBAUM. Is it a fact that the GAO found that the underreporting of lost work day accidents was about 50 percent higher than the figure that was used by MSHA itself, 9 percent as against 13 percent?

Mr. GAINER. Yes, sir. I did not follow the question for a second.

Senator METZENBAUM. Thank you. I have no further questions. I thank the GAO for doing a good job.

Senator SIMON. Thank you, Senator Metzenbaum.

Mr. Gainer, I just today had a brief visit with Joseph Kinney from the State of Illinois, whose brother was killed in a scaffold accident—not in a mine, a scaffold accident. He said do you know how many people are killed in scaffold accidents each year in the United States. I said I do not have any idea. He said about 100. He said do you know how many people are killed in Japan each year in scaffold accidents? I said again I did not have any idea. He said none. He said they are just much more careful about these things in their requirements.

Did you do any comparison with other countries in how we are doing in mine accidents with, say, West Germany or Great Britain or others?

Mr. GAINER. No; sir, we did not make such comparison as part of the study. I do not think we have that kind of information with us.

It would be something that we could provide to you for the record if you would like.

Senator SIMON. I would be interested in receiving that information.

[The information referred to follows:]

Data on international comparisons of mining accidents seem neither consistent nor comparable. The two basic sources of information are industrial accident compensation data and accident reporting systems. The latter is more comprehensive. The following data shown for Japan and the United States are reported accidents, and for the United Kingdom and the Federal Republic of Germany are compensated accidents. In addition, there may be differences among the countries in their reporting requirements, for example, by size of establishment, or inclusion of injuries not involving lost work time. Regarding the latter, the following figures for the United States include such injuries, but the reports do not specify whether the data for the United Kingdom and the Federal Republic of Germany cover them.

Also, the following data include numbers of persons in paid employment in mining, but such information may lack uniformity in the definitions used by different countries and in their computing and estimating methods. Perhaps most important, the following data cover all mining activities, including crude petroleum and natural gas production which is not in the purview of MSHA responsibilities. Further, the reports do not specify the proportion of coal mining in total mining nor the proportion of surface versus underground mining. Accordingly, the following data should be used with extreme care.

PERSONS INJURED AND WORKDAYS LOST
MINING AND QUARRYING[1]
ANNUAL AVERAGE 1980-82

Country	Number of Fatalities	Fatality rate[2]	Number of all other injuries	Other injury rate[2]	Number of workdays lost
Japan[3]	146	.0015	not reported	not reported	not reported
United Kingdom[4]	68	.0002	46,855	.134	1.2 million days
Federal Republic of Germany[4]	173	.0005	51,947	.151	not reported
United States[3]	467	.0004	65,333[5]	.059	1.6 million days

1/ Coal mining, crude petroleum and natural gas production, metal ore mining, and other mining. Information is not available on proportion in coal mining and on proportion in surface versus underground mining.

2/ Fatality and other injury rates are computed by dividing the number of fatalities or other injuries by the number of employees in mining and quarrying. In Japan, there were 97,000 employees. In the United Kingdom, there were 350,000 employees. In the Federal Republic of Germany, there were 344,000 employees. In the United States, there were 1.1 million employees.

3/ Reported accidents

4/ Compensated accidents. For the Federal Republic of Germany, data are annual average 1980-81.

5/ Includes non-fatal cases without lost workdays

Source: Year Book of Labor Statistics 1985
International Labor Office, Geneva

Fatality Rates at Underground Coal Mines*

(per million man hours)

	U.S.	United Kingdom	Federal Republic of Germany	France
1975	.47	.18	.41	.18
1976	.48	.16	.38	.60
1977	.44	.11	.34	.19
1978	.35	.15	.40	.22
1979	.46	.14	.40	.15
1980	.42	.13	.39	.36
1981	.56	.09	.34	.17
1982	.41	.11	.23	.32
1983	.29			
1984	.58			
1985	.28			

*Source: European Community Data - Accidents in Underground Coal - Health and Safety Commission for Mining and Other Extractive Industries, and Mine Safety and Health Administration Data

GENERAL QUALIFICATIONS for MINE INSPECTORS

Historically, most Federal Mine Inspectors hired from outside MSHA have been hired at the GS-9 level. Applicants for the GS-9 level must have five years of practical mining experience. This requirement has been established by the Office of Personnel Management and is in accordance with the Federal Mine Safety and Health Act of 1977, as amended: "to the maximum extent feasible, in the selection of persons for appointment as mine inspectors, no person shall be so selected unless he has the basic qualification of at least five years practical mining experience and in assigning mine inspectors to the inspection and investigation of individual mines, due consideration shall be given to the extent possible to their previous experience in the particular type of mining operation where such inspections are to be made."

Candidates for the GS-9 level must have a comprehensive knowledge of mine safety and health, so experience in one or two specialized lines of work will usually not be sufficient.

Examples of acceptable experience include experience in a variety of positions, experience as a supervisor or experience in positions that have broad responsibility for mine safety and health.

Candidates for the GS-7 level must have four years of experience; this experience does not have to be in mining, but may be in closely related industries, so that some knowledge of mining methods, equipment and safety and health is demonstratable.

At the GS-5 level, candidates must have three years of experience that shows the ability to learn and apply technical information to mining practices. This experience may be obtained in mining, in related work, or in an apprenticeship training program.

At the GS-5 and GS-7 levels, four years of college level coursework may be substituted for three years of experience, provided that the coursework was in a related field. Thus, appropriate education is fully qualifying for the GS-5 level.

Affiliation of Mine Inspectors *
Random Samples by Districts

COAL

	Non-Supervisory	Supervisory/Management
DISTRICT I		
28 Reviewed	11 = 39%	17 = 61%
DISTRICT II		
132 Reviewed	43 = 33%	89 = 67%
DISTRICT III		
73 Reviewed	19 = 26%	54 = 74%
DISTRICT IV		
217 Reviewed	87 = 40%	130 = 60%
DISTRICT V		
169 Reviewed	73 = 43%	96 = 57%
DISTRICT VI		
123 Reviewed	52 = 42%	71 = 58%
DISTRICT VII		
164 Reviewed	71 = 43%	93 = 57%
DISTRICT VIII		
102 Reviewed	24 = 24%	78 = 76%

*Many of the inspectors from supervisory/management had previously worked in a non-supervisory capacity.

COAL (Continued)

	Non-Supervisory	Supervisory/Management
DISTRICT IX		
52 Reviewed	20 = 38%	32 = 62%
DISTRICT X		
45 Reviewed	14 = 31%	31 = 69%
	TOTAL COAL	
1105 Reviewed	414 = 37%	691 = 63%
	METAL	
NORTHEASTERN DISTRICT		
52 Reviewed	21 = 40%	31 = 60%
SOUTHEASTERN DISTRICT		
42 Reviewed	13 = 31%	29 = 69%
NORTH CENTRAL DISTRICT		
50 Reviewed	23 = 46%	27 = 54%
ROCKY MOUNTAIN DISTRICT		
86 Reviewed	42 = 49%	44 = 51%
	TOTAL METAL	
230 Reviewed	99 = 43%	131 = 57%
	COMBINED TOTAL	
1335 Reviewed	513 = 38%	822 = 62%

Senator SIMON. Then I note that you say in fiscal year 1984 MSHA completed about 60 percent of its required metal/nonmetal inspections. For the first 9 months of fiscal year 1986, the agency completed 96 percent of the required inspections. And in the table on page 6 you show a 41-percent increase again in fiscal year 1986 over 1985. What accounted for the increase? Was this increased numbers? Did we have a 41-percent increase in inspectors, or were they just doing a better job, or has the quality of the inspection diminished? What accounts for that difference?

Mr. GAINER. I think there are a lot of reasons for it. I do not think we can make any normative judgment on what has happened to the quality of inspections. We just did not do that kind of work. But a major factor has been that MSHA has really cracked down and said that the mandatory inspections will take place.

Another thing is that the data base they were using in 1984 included an awful lot of mines that really were not in operation. When they cleaned their data base, they made a giant leap in the percentage of mandatories that were done. I think some of the other activities that normally go on which are enforcement related, such as visits to mines for training purposes, to talk to miners and other company people about their safety programs, have decreased. Their own statistics show decreases in a number of areas.

Our work in the field showed some evidence that some people in the unions and in the Ohio Newark field office felt that the quality of inspections was suffering. I cannot say, though, that we have enough information to conclude anything about whether or not that is happening on a broad scale.

Senator SIMON. Is this because of Secretary Brock coming in and providing more vigorous leadership, or what accounts all of a sudden for the change?

Mr. GAINER. Well, I think that leadership is probably an important factor and it certainly cannot be discounted. I think that if any Government agency decides it is going to stress something, and if the leadership right down the line concentrates on that thing, you are going to see some change. Some of it will be real and in some cases, perhaps in the case of Ohio it is a cosmetic change. So I think there is probably a broad range of what inspectors in the field have done to respond to this increased emphasis.

Senator SIMON. And then finally, in response to the question by Senator Metzenbaum you said you advised somebody to work in a large mine and so forth, the disproportionate number of accidents in these small mines, do we need a change in the regulations or the law so that small mines get inspected a little more frequently? Clearly, something ought to be done.

Mr. GAINER. I do not think I could say what should be done. That has been studied before. Prima facie, one would think that more inspections of small mines is something that should occur. I should say that there are some problems related to reporting statistics which Steve Backhus was talking about with me this morning, and I think that might be worth mentioning at this point because it deals with both the question of the reporting and small and intermittent mines.

Senator SIMON. Mr. Backhus.

Mr. BACKHUS. Senator, the agency has a difficult time identifying some of the small mines that are operating or intermittent mines, those that are open for just a short period of time. They have difficulty getting there while they are open or difficulty making a full inspection when only part of the mine is operating.

It seems to me that one option or one opportunity would be to have the operators or companies notify or alert MSHA when they are going to begin operations so that there could be an inspection made. This is something that I feel is an important matter to consider.

On a related matter regarding inspection time, we picked up some information on the amount of inspection activity of small mines, those that have 19 employees or less. Proportionately, inspection time is a little bit higher than the number of hours inspectors spend in large mines—that is, when comparing the number of miners and production, and that sort of thing.

I do not know how much is enough, but in comparing employee hours worked, for example, small mines account for only 11 percent of the time spent in mines, yet 31 percent of MSHA's inspection time is devoted to them. There seems to be a little bit more emphasis on the small mines than large mines.

Senator SIMON. And it would seem to me that emphasis has to continue.

Senator Grassley.

Senator GRASSLEY. Mr. Chairman, I just want permission to put an opening statement in the record.

Senator SIMON. We will enter that statement in the record at the appropriate place.

Senator GRASSLEY. I have no questions of this panel.

Senator SIMON. Senator Dodd.

Senator DODD. No, Mr Chairman. I may submit some, but I appreciate the witnesses being here. Thank you

Senator SIMON. Senator Metzenbaum, do you have any further questions?

Senator METZENBAUM. Well, I do have one comment and I want to say that I have requested the GAO to make this study about 8 months ago and they are at an interim stage at the present time, and I think that all of us in the Congress have to feel a great sense of appreciation and gratitude that time and time again we look to the GAO for an independent and exhaustive investigation of the facts and calling it as they see it and I just want to say for myself that I am very grateful for the fact that you men as well as the agency for which you work has again served the public interest.

Mr. GAINER. Thank you very much, sir.

Senator SIMON. I think Senator Metzenbaum speaks for all of us in that regard. We thank you for being here.

Mr. GAINER. Thank you, Mr. Chairman.

Senator SIMON. We will keep the record open for any other opening statements or further questions that anyone might have.

[The prepared statement of Mr. Gainer follows:]

Summary of Testimony
Mine Safety and Health Administration's (MSHA)
Inspection Practices and Accident/Injury Reporting System
William J. Gainer, Associate Director,
U.S. General Accounting Office

GAO is presenting preliminary results on mechanisms that MSHA uses to (1) assess and ensure the quality of legislatively mandated mine inspections and (2) verify the accuracy and completeness of accident and injury reporting by mine operators. Also presented is information on how MSHA has reduced its shortfall in conducting mandated inspections.

GAO's comparison of fiscal year 1985 and 1986 MSHA resource allocations shows that time spent on mandated inspections has increased by about 31 percent while it has decreased by about 18 percent on other enforcement activities. Total enforcement time nationwide increased by about 10 percent and the average time spent on each mandatory inspection did not change substantially. While inspectors GAO spoke with generally said that inspection quality has not declined, some feel it has.

Although MSHA has some elements of a quality assurance system, the mechanisms being used are not adequate to fully determine inspection quality. GAO found that:

--inspectors are well trained and appear to have needed skills,

--supervision of inspectors and documentation describing supervisory observations varies significantly, and is sometimes inadequate for judging inspection quality,

--documentation describing inspection activities also varies significantly and is sometimes inadequate to determine the coverage of inspections,

--evaluations of inspection quality are not done throughout MSHA and occur only every three years,

--feedback from unions and mine operators is regularly obtained by MSHA, and

--reports generated by the agency's management information system are useful as part of a quality assurance system but they do not and cannot, in themselves provide information on the quality of individual inspections.

The mechanisms MSHA uses to verify the accuracy of accident and injury data do not fully assess the extent to which mining companies are reporting as required. GAO's limited comparison of state workers' compensation records with accident reports showed that state records are a workable tool for identifying previous unreported accidents.

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STATEMENT OF
WILLIAM J. GAINER, ASSOCIATE DIRECTOR
HUMAN RESOURCES DIVISION

BEFORE THE
SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES

ON

MINE SAFETY AND HEALTH ADMINISTRATION'S INSPECTION PRACTICES AND ACCIDENT/INJURY REPORTING SYSTEM

Mr. Chairman and Members of the Committee:

I am pleased to be here today to discuss preliminary results of our work, requested by Senator Metzenbaum, on (1) the quality of legislatively mandated mine safety and health inspections by the Department of Labor's Mine Safety and Health Administration, (MSHA), and (2) the extent of accident and injury reporting by mine operators. This work is a follow-up to two GAO reports[1] describing MSHA's problems and progress in conducting the required number of mine inspections and concerns that have been raised by others about the reliability of MSHA's accident and injury reporting system.

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[1] Strong Leadership Needed to Improve Management at the Department of Labor, GAO/HRD-86-12, October 21, 1985 and Mine Safety: Labor's Progress in Doing Required Inspections, GAO/HRD-86-65BR, March 7, 1986.

Our work thus far and my testimony today focuses principally on the mechanisms MSHA told us it uses to (1) assess and ensure the quality of mine inspections and (2) verify the accuracy and completeness of accident and injury data reported by mine operators. I will also present information we developed that Senator Metzenbaum subsequently requested regarding the means MSHA has used to reduce its shortfall in conducting mandated inspections.

To consider inspection quality we did not attempt to make independent judgements of the quality of inspections performed because we believe we are unqualified to do so. Instead we examined the agency's means of assuring quality inspections by obtaining the views of various mining experts and obtaining and analyzing available data and documents related to inspection procedures, activities, and practices.

We spoke with MSHA headquarters and field officials, mine operators, mining associations, and United Mine Workers of America officials. In April 1986, we convened a panel of coal mining experts to discuss mine safety and health issues. The panel consisted of officials from MSHA, the Bituminous Coal Operators Association, National Independent Coal Operators Association, United Mine Workers of America, and academicians from the University of Kentucky and Pennsylvania State University.

Regarding accident and injury reporting we also obtained data from two state workers' compensation offices to test the

completeness of data reported to MSHA by mine operators. Our study covers MSHA activities in Colorado, Kentucky, Ohio and Pennsylvania and was performed from February to September 1986.

In summary, our work is showing that:

--with regard to relieving the shortfall in conducting mandated mine inspections, MSHA attributes its progress to better use of existing resources, establishing performance incentives for its managers, and updating its management information system to reflect an accurate mine inventory. Our comparison of fiscal year 1985 and 1986 MSHA resource allocations shows that time spent on mandated inspections has increased by about 31 percent while it has decreased by about 18 percent for other enforcement activities. Total enforcement time nationwide increased by about 10 percent,

--although the agency has some elements of a quality assurance system, the mechanisms being used by MSHA are not adequate to fully determine the quality of its mandatory mine inspections, and we believe such a system is needed, and

--the mechanisms used to verify the accuracy of accident and injury data do not fully assess the extent to which mining companies are reporting all required information and there is potential for the agency to strengthen its means of verifying reported statistics.

I will elaborate on these points momentarily but would first like to provide some background information.

BACKGROUND

The Federal Mine Safety and Health Act (Public Law 91-173, as amended by Public Law 95-164) was enacted in 1977 to protect the health and safety of the nation's miners. The 1977 Act requires that the Secretary of Labor promulgate health and safety standards and conduct safety and health inspections of coal and other mines (commonly referred to as metal/nonmetal mines). The Act specifies that MSHA conduct at least four regular inspections annually of underground mines and at least two regular inspections per year of surface mines. These mandatory regular inspections involve a thorough check of mines in their entirety.

The Act also requires mine operators to maintain records and submit reports specified by the Secretary of Labor. Under this authority the Secretary promulgated regulations establishing a common system of mandatory reporting and recordkeeping of mining incidents and injuries.

MSHA, is comprised of two administrations--one for coal mines and one for metal/nonmetal mines. It operates largely in a decentralized manner, delegating oversight of inspection activities and company accident reporting to its district, subdistrict, and field offices for both the coal and metal/nonmetal administrations. There are currently 16 districts, 28 subdistricts, and 115 field offices.

Although mining fatalities and injuries have decreased sharply since 1969, Bureau of Labor Statistics data shows

mining continues to be one of the most dangerous occupations in the United States. In 1985, the mining industry had the fewest number of fatalities (124) and lowest lost time injury rate (4.84 for coal and 2.73 for metal/nonmetal) in its history. However, as of June 30, 1986 fatalities increased to 80 compared to 70 during the first six months of 1985 and the injury rate has increased to 6.56 for coal and 4.57 for metal/nonmetal.

I will now elaborate on our findings.

INCREASED EMPHASIS ON MANDATED INSPECTIONS

MSHA has placed greater emphasis on completing mandated regular inspections and has made significant progress. In fiscal year 1984 MSHA completed about 60 percent of its required metal/nonmetal inspections. For the first nine months of fiscal year 1986, the agency completed 96 percent of the required inspections. During this period, there were no significant shortfalls in required coal mine inspections. Because the shortfall in inspections was concentrated in metal/nonmetal mines, we limited our analysis of MSHA's efforts to relieve the shortfall to these mines.

MSHA attributes the increase in completing mandatory inspections to (1) better use of existing resources, (2) establishing performance incentives for district managers, and (3) updating its management information system to reflect an accurate mine inventory. The metal/nonmetal administration has made these improvements without increasing its existing resources.

Our comparison of fiscal year 1985 and 1986 MSHA resource allocations shows that time spent on mandatory regular inspections increased by about 31 percent, while time spent on other enforcement activities decreased by about 18 percent. Total enforcement time, which includes mandatory inspections, increased by about 10 percent, while the average time spent on each mandatory inspection did not change substantially.

Table 1

Metal/Nonmetal Resource Allocations[a]
FY 1985 vs 1986

Activity	Number of Events FY 1985	Number of Events FY 1986	Percent of Change	Number of Hours FY 1985	Number of Hours FY 1986	Percent of Change	Hours Per Event FY 1985	Hours Per Event FY 1986
Regular Inspections	9,632	13,647	+41.7	182,438	238,476	+30.7	18.9	17.5
Other Enforcement[b]	13,985	10,795	-22.8	138,196	112,861	-18.3	9.9	10.5
Total Enforcement	23,617	24,442	+ 3.5	320,634	351,337	+ 9.6	13.6	14.4

[a]figures reflect completed events for the first 9 months of fiscal year 1986 compared to the same period in fiscal year 1985.

[b]includes 21 enforcement activities such as checking to see if previously noted violations were corrected, efforts to assist mines in reducing the number of accidents, investigations resulting from complaints, and "spot" inspections of mines with records for emitting excess gases.

Decreases in time spent on other enforcement activities occured in 15 of the 21 categories. The most significant of these were efforts to assist companies in reducing the number of accidents and efforts to assist companies to comply with health and safety standards.

At the three metal/nonmetal field offices we visited, we discussed with inspectors and, where possible, with their supervisors whether the increased emphasis on completing mandated inspections had affected their ability to perform quality inspections or other important activities. Inspectors and supervisors in two of the three offices told us that the quality of their inspectors had not changed.

In one of these offices, Pittsburgh, inspectors told us it was difficult to complete the required number of inspections but with the support of their distsrict managers, supervisors and specialists they felt they were continuing to do high quality work in all areas.

Inspectors and supervisors in the Denver field office said that the quality of their work had not been adversely affected either. At the time of our visit this particular office had two more inspectors than its staffing authorization called for.

In Ohio, inspectors expressed a different view. All seven inspectors expressed concern that the emphasis on completing required inspections had sometimes forced them to compromise the quality of their inspections and other activities. As a result, they believe the safety and health of miners may be in jeopardy. For example:

--one inspector stated that he was directed by his supervisor to charge the time spent (27 hours) on a complaint investigation as a mandatory regular inspection even though he did not inspect any operating section of the mine,

--one inspector said that he is no longer making on-site visits to those mines participating in the Program in Accident Reduction (PAR)--a safety program targeting mines that experience high accident/injury rates. Normally, the inspector would make monthly site-visits to collect safety information, observe work practices of miners and discuss with operators ways to reduce accidents and injuries. He is now collecting needed safety information by telephone in order to save time. He believes this practice will hurt the effectiveness of the PAR program,

--one inspector said that he has reduced the time spent on regular inspections at some mines by not thoroughly inspecting all electrical equipment. At one large mine in particular he said it would take him 3 weeks to complete the regular inspection if he checked all electrical equipment. Rather, he is now taking approximately one week to complete this inspection.

As of July 1986 this field office had operated without a supervisor for the previous 4-1/2 months and was staffed two inspectors below what its authorized level called for. Senior MSHA officials told us that a new supervisor and one more inspector have already been assigned to the office and they are planning to add another inspector.

QUALITY OF INSPECTIONS

In discussions with a variety of MSHA officials, we were told that to ensure the quality of inspections they relied upon the:

--training and experience of their inspectors,

--supervisory on-site visits while inspections are being conducted,

--supervisory review of inspection documentation,

--periodic program evaluation,

--feedback from operators and unions, and

--the agency's management information system.

After studying these mechanisms we concluded that although portions of this system are or could be important elements of a quality assurance system they are currently inadequate for the agency to monitor and draw conclusions on the quality of their mandatory regular mine inspections. While there are components of a quality assurance program in various parts of the agency, they are used inconsistently.

The coal and metal/nonmetal administrations operate independently, with each establishing its own means of monitoring inspector performance and providing much discretion and responsibility for oversight to local offices. This has resulted in significant differences in the type and extent of individual offices' efforts to monitor the quality of inspections. In examining the various mechanisms the agency uses we found that:

--inspectors are well trained and appear to have the needed skills and experience to do their job,

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--the frequency of supervisory site-visits made and the extent of documentation describing supervisory observations vary substantially, from providing a good basis for judging inspection quality to inadequate,

--the thoroughness of inspectors' documentation of their inspection activity, coverage, and observations on particular inspections vary significantly, sometimes providing good descriptions of what they inspected and found but in other cases inadequate to determine the extent of their inspection,

--the metal/nonmetal administration conducts reviews of its district offices every three years that, in part, evaluate inspector performance in some of its field offices. The coal administration has no similar evaluations explicitly addressing inspection quality,

--MSHA regularly obtains information from operators and unions regarding inspection activities. However, we have not evaluated the agency's responsiveness to the matters brought to its attention, and

--management information generated from automated data bases provides a wide range of data and statistics and can be thought of as a useful element of a quality assurance system, but the reports generated do not in themselves, nor could they provide information on the quality of individual inspections.

Experience and Training
of Inspectors

The 1977 Act requires newly hired inspectors to have at least 5 years or the equivalent in practical mining experience. At the six field offices we visted, we were told that the majority of MSHA inspectors had 10 or more years experience. Inspectors often advanced to key company positions such as mine foreman, superintendent, and/or safety director before coming to MSHA.

Inspectors, during their first year with MSHA, must participate in a comprehensive 9 to 13 week entry-level training program followed by a 6 to 9 month on-the-job training program. Following their first year, inspectors participate in refresher training programs and local seminars to keep them current on new mining technology and equipment as well as MSHA policy changes.

Our review of training data showed that inspectors have generally received the training required by MSHA regulations. However, according to the coal and metal/nonmetal administrators, formal refresher training has been reduced because of budgetary restrictions and the increased emphasis on completing the mandatory regular inspections. Coal inspector refresher training has been reduced from 2 weeks every year to 2 weeks every 2 years and starting in fiscal year 1987, metal/nonmetal inspectors will be provided 2 weeks of formal training every 3 years instead of every 2 years.

While there are clear indications that MSHA inspectors currently have the necessary skills and experience to do their

job, there is a large potential number of inspectors that may retire over the next several years which we and senior agency officials believe is a matter for concern. Presently, the average age of MSHA inspectors is 52 years old with 11 percent (119 of 1,047) eligible for retirement at the end of this calendar year. Within the next 5 years, about 42 percent (449) of the current inspector workforce will be eligible for retirement.

In December 1985, Congress provided MSHA with money to hire 90 additional inspectors in fiscal year 1986. MSHA officials told us that they did not hire the additional inspectors as authorized but instead used the funds to help prevent possible furloughs (4 days) brought about by the Gramm-Rudman-Hollings budget cuts. The Senate Appropriations Committee recently approved a fiscal year 1987 spending measure, again providing money for an additional 90 inspectors. The Department of Labor has announced plans to begin hiring new inspectors, reinstating some inspectors who left the agency voluntarily, and converting some employees who formerly were inspectors back to inspector positions. In total, Labor plans to increase MSHA's inspector force by 174, with 130 on board by January 30, 1987.

Supervisory Visits

Although considered an aspect of its quality assurance system, MSHA does not require its supervisors to accompany and evaluate its inspectors during regular inspections. However, some district and local managers set their own requirements.

In June 1982, the Department of Labor Inspector General reported that inspectors were rarely accompanied by supervisory personnel and supervisors' observations of their performance were not being documented. Our review of five district and 14 local offices showed wide variations in (1) the frequency of supervisory visits made during regular inspections and (2) the amount of documentation prepared by supervisors to record their observations. As a result, some supervisors seem to have a good basis for commenting on inspection quality but others do not. For example:

--The supervisor at one metal/nonmetal field office told us that he rarely made on-site visits during regular inspections because he was the only supervisor and had no administrative support staff. The bulk of his time was spent on administrative matters such as preparing office correspondence, answering the telephone, filing and processing the mail. One of the inspectors at this field office commented that the supervisor had not accompanied him on a regular inspection for 6 1/2 years. In fiscal year 1985 this office conducted nearly 350 regular inspections. According to the Assistant Secretary, the workload in small field offices does not support full time clerical help.

--At another metal/nonmetal field office a supervisor had not made an on-site visit during regular inspections in 2 years and the other supervisor of six inspectors did not make any

supervisory visits over the last year. In the first three quarters of fiscal year 1986 this office conducted more than 400 regular inspections.

--At a third metal/nonmetal field office, the inspectors told us that their supervisors accompany them on regular inspections three to four times per year.

--One coal district manager required field office supervisors to make on-site visits with each inspector for a minimum 3 days per year and supervisors routinely recorded their observations. The deficiences found during these on-site supervisory visits were compiled quarterly with all inspectors being informed that such deficiencies should be corrected in future inspections. In addition, the supervisors used their recorded observations to prepare annual performance evaluations.

Inspection Reports and Notes

One of the tools MSHA says its supervisors have available to them as a means of monitoring the quality of inspections is documentation inspectors prepare describing their inspection activities and findings. This documentation consists of inspection reports, which list the violations found, and inspector notes which serve as the support for the violations cited. MSHA requires its inspectors to prepare clear, concise, and factual notes.

We found a wide variation in the extent to which inspection reports and notes together describe the depth and breadth of

inspections, in terms of what was inspected, tested, and found. In some instances the documentation provides a good description of inspection activity but in other cases is inadequate for supervisors to determine the extent of the inspection. Inspectors and supervisors told us that they generally limit their documentation to describe the violations which they found.

Evaluations conducted by the metal/nonmetal administration, (which I will describe in more detail momentarily), have found similar situations. Inadequate note taking was identified in all six metal/nonmetal districts with the findings ranging from no note taking in instances where no violations were found to notes not being interpretable because they were written in "shorthand".

Program Evaluation Reviews

Since 1983, the metal/nonmetal administration has been conducting program evaluation reviews to determine how effectively, efficiently, and uniformly districts carry out their mission. A headquarters team made up of representatives from various agency divisions and offices evaluates two of the six districts each year. As part of this review, team members accompany inspectors on inspections and evaluate them on a wide range of health and safety inspection practices and procedures as well as the inspector's knowledge and application of health and safety standards.

Although the evaluation reports do not indicate the number of inspectors evaluated they do describe inspector

deficiencies. For example, in the six reports completed to date inspectors were cited for things such as inadequate note taking and a lack of thoroughness in doing inspections. Five of the reports critized some inspectors for failing to issue citations on violations they observed during inspections. Four reports criticized some supervisors for not making enough supervisory visits during inspections. The reports do not however, contain conclusive statements on the quality of inspections.

In contrast the coal administration conducts internal control reviews which focus primarily on administrative functions. These reviews do no explicitly address the quality of inspections. In our judgement the metal/nonmetal evaluations seem useful as a tool to monitor inspection quality. We believe that the agency should consider using similar evaluations of its coal offices as part of quality assurance system.

Management Information

The agency's management information system is comprised of three distinct data bases--coal, metal/nonmetal, and accident and injury. Approximately 90 different reports are routinely generated on a monthly, quarterly, and annual basis. The system includes data on such things as

--the number and type of inspections completed, safety violations and citations issued,

--the amount of time spent on inspection activities,

--the number and type of accident and injuries at mines, and

--mine characteristics.

These reports provide a broad range of data and statistics which can be used by managers at all levels to monitor the extent of inspection coverage, inspector productivity and many other indicators. Although this system can be thought of as a useful element in a quality assurance system the reports it generates do not in themselves provide, nor could they, explicit information on the thoroughness of individual inspections. That is, it cannot substitute for supervisors' visits to the inspection sites or some explicit mechanism for documenting inspection coverage.

Operator and Union Views

MSHA regularly obtains information from operators and unions regarding inspection activities. We have not evaluated the agency's responsiveness to all the matters brought to its attention.' However, we did find that MSHA investigates written complaints regarding safety concerns in mines, as required by law. MSHA officials believe that most of the matters which unions bring to their attention have some basis and that they are sensitive to union concerns. To obtain some perspective on how inspector performance is perceived, we solicited the views of mine operators, (11 coal and 12 metal/nonmetal) and union officials, specifically the United Mine Workers of America, at the national and local levels.

The general consensus of the mine operators is that inspectors are dedicated, highly professional individuals who perform quality inspections. They believe that the inspectors serve as

an "extra set of eyes" and have a positive influence on safety and the behavior of the company workers.

Operators have one common concern, however. In their opinion, inspectors are not always consistent in their interpretation and application of the safety and health standards-what is considered a serious or citable violation by some inspectors is not by others.

In contrast, United Mine Workers officials we talked with had mixed views on the quality of inspections. At the national level, a top union official expressed the view that inspectors need to strengthen their enforcement practices especially when dealing with small mines (less than 50 employees). This official believes that MSHA promotes a "go easy" enforcement attitude toward small mines which has resulted in inspectors not holding small operators to the same safety and health standards as large mine operators.

A representative at the local level stated that the particular MSHA district office having responsibility for his mines was the best enforcement district and had very good inspectors. He attributed this in part, to the strong management philosophy currently in place in that MSHA district. Another local union official, in a different district, believes that inspection quality is decreasing, that inspectors are neglecting to check important parts of mines such as airways and beltways; and that only 25 to 30 percent of violations are cited by inspectors.

ACCIDENT AND INJURY REPORTING

Under the authority of the 1977 Act the Secretary of Labor has promulgated regulations establishing a common system of mandatory recordkeeping and reporting of mining accidents and injuries. Information on accidents and injuries forms the basis for many important statistical analyses for tracking the effectiveness of health and safety programs and as a measure of industry safety and health. Given the importance of these data MSHA has developed a program to promote and verify the accuracy of reporting and has established a penalty system for underreporting.

Our preliminary analysis shows that MSHA's mechanisms used to verify the accuracy of accident and injury data do not fully assess the extent to which mining companies are reporting all required incidents. In relation to the number of mines, few compliance audits are conducted, and where they are performed, some are deficient. An agency analysis of compliance audit findings over a two year period shows overall underreporting of 10 to 13 percent of all reportable accidents and injuries. For those injuries which caused lost work days they found about 9 percent underreporting. However, a limited analysis we made of lost work day claims filed with two state workers' compensation offices showed that at least 13 percent of reportable lost day incidents had not been reported to MSHA. We believe therefore that these workers' compensation records provide potential for the agency to strenghthen its means of verifying statistics reported by mine operators.

Our discussions surfaced a number of concerns and issues related to accident and injury reporting, namely:

--some inspectors view compliance audits as unimportant especially in light of the emphasis on completing mandatory mine inspections,

--some underreporting may result from operator unfamiliarity with reporting criteria, and

--penalties for underreporting are viewed by some as not significant and serve as an incentive not to report.

Compliance Audits

The primary tool MSHA uses to measure the accuracy of accident and injury reporting is a compliance audit. Compliance audits are conducted by inspectors on mine property. MSHA instructions for conducting compliance audits specify that inspectors need to examine all the information concerned with injuries experienced at the mine during the period being audited. The instructions state that such records may consist of reports prepared by foremen, nurses, and doctors, company insurance and workers' compensation reports, and employee files.

Compliance audits are not routinely performed, but rather, are triggered by some occurence or event such as a fatal accident, a noticeable change in the mine's accident and injury rate, or a complaint brought by a miner or union representative. Over the two year period, 1984 and 1985, 510 compliance audits were conducted, or about one audit for every 61 mines per year.

Our discussion with inspectors, supervisors and mine operators indicates, and an MSHA study confirms, that there are wide variations in the quality of compliance audits made by inspectors. For example:

--at one coal and one metal/nonmetal field offices, inspectors do not review company records but instead compare only incident reports that the operator sent to MSHA with the (same) reports the operator has on file, and

--one coal operator told us that inspectors have never examined or even sought company records in the eight years he has had responsibility for company reporting.

Extent of Underreporting

A February 1986 MSHA report presenting an analysis of a sample of compliance audit findings over a four year period shows coal and metal/nonmetal operators report about 87 and 90 percent of all required incidents, respectively. For lost work day injuries, the analysis shows coal operators underreporting about 9 percent of the incidents. (A similiar analysis was not reported for metal/nonmetal operators.) The analysis covers 433 compliance audits conducted during 1984 and 1985 but the report cautions that the actual extent of underreporting could not be precisely determined because the mines audited did not constitute a valid sample of the industry.

For our study, we made a limited comparison and analysis of lost work day incidents reported by 18 mines in Colorado and Ohio with the states' workers compensation records of claims made by employees in calender year 1985. In those instances where we identified discrepancies between state records and company incident reports we discussed that matter with the mine operators. Our analysis does not permit us to estimate the extent of underreporting. However, the mines selected for analysis were a mixture of large and small ones, with high and low accident and injury rates, and union as well as nonunion mines.

We found that 10 of the 18 mines underreported lost work day incidents to MSHA and in total 13 percent of the lost-day accidents were not reported.

Table 2

LOST WORK DAY INCIDENTS NOT REPORTED TO MSHA

Mines Reviewed	Mines Underreporting	Type of Mine	State	Number of Incidents Requiring Reporting	Number of Incidents Not Reported	Percent Not Reported
5	2	Metal/nonmetal	Ohio	35	9	25
8	3	Metal/nonmetal	Colo.	26	3	12
5	5	Coal	Ohio	177	20	11
18	10			238	32	13

Generally, operators attributed the underreporting to administrative errors or oversights.

None of the MSHA offices we visited had working relationships with state workers' compensation offices. Therefore, we believe, based on our analysis, that MSHA should explore opportunities to use state workers' compensation records as a means of strengthening its verification of reported data.

Issues, Concerns and Other Matters About Accident and Injury Reporting

Many inspectors as well as the MSHA study expressed concern over the extent to which company records such as workers' compensation reports, medical reports and employee attendance reports must be made avaiable to inspectors during a compliance audit. Some inspectors told us they have been denied access to this information and therefore they no longer request it when doing audits. MSHA officials, the MSHA study and operators noted that the courts have ruled that companies only have to provide inspectors with records specified in the Act and implementing regulations. They also said that neither the Act nor the regulations specifically require companies to maintain workers' compensation records, medical reports, or employee attendance reports and therefore companies do not have to provide this information to inspectors. It is clear that the usefullness of compliance audits is limited when detailed company records are made available.

The MSHA study as well as our discussion with operators indicates that some underreporting also occurs because some operators are unfamiliar with the reporting criteria established by MSHA. In response to these views, MSHA has provided each

operator with a full copy of its requirements and reemphasized to inspectors their responsiblity to discuss the importance of reporting with operators as part of regular inspections. These positive steps could help improve reporting.

Almost all of the inspectors we spoke with pointed to the emphasis on completing mandatory inspections as an inhibitor to performing more compliance audits. Some expressed the view that compliance audits were unimportant and do not believe an increased number of audits is warranted. MSHA believes that efforts to ensure a perfect, or near perfect system would entail a very large commitment of resources, involving many more audits, more comprehesive checks of other sources of data, more training, and more time spent administering the citation process. MSHA feels that an informed decision can only be made after sufficient time has elapsed to evaluate the impact of its recent actions. Determining the "right" number of compliance audits is a resource issue that we believe MSHA needs to address.

Lastly, the general view of MSHA supervisors and union officials we spoke with is that the penalty for not reporting an accident or injury is too small and serves as an incentive for nonreporting. Operators feel differently, believing that current penalties are significant. A $20 fine is imposed for each nonreported incident with provisions for supervisors to impose special assessments for willfull underreporting. (Prior to January 1986, the penalty was $20 for all underreporting found during a compliance audit.)

To sum up our results pertaining to accident and injury reporting, we believe that the mechanisms MSHA uses to verify statistics do not fully assess the extent to which companies report all required incidents and that the agency should explore the use of state workers' compensation records as a means of strengthening its verification process.

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Mr. Chairman this concludes my prepared statement. I and my colleagues will be glad to answer any questions you may have.

Senator SIMON. The next panel is composed of Mr. David Zegeer and Mr. Ford B. Ford. Mr. Zegeer is the Assistant Secretary of Labor for MSHA, and Mr. Ford is the Chairman of the Federal Mine Safety and Health Review Commission. We are happy to have both of you here. We would like to confine statements to 5 minutes, if we could, and enter full statements in the record and devote the rest of the time to any questions.

Mr. Zegeer? And if you can identify the others that are at the table with you for the record.

STATEMENT OF DAVID A. ZEGEER, ASSISTANT SECRETARY OF LABOR FOR MINE SAFETY AND HEALTH; ACCOMPANIED BY THOMAS J. SHEPICH, DEPUTY ASSISTANT SECRETARY; LAWRENCE M. BEEMAN, DIRECTOR, OFFICE OF ASSESSMENTS; PATRICIA W. SILVEY, DIRECTOR, OFFICE OF STANDARDS, REGULATIONS, AND VARIANCES; AND FORD B. FORD, CHAIRMAN, FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Mr. ZEGEER. The gentleman on my right is Thomas Shepich, who is my Deputy, and to his right is Mr. Larry Beeman, who is our Assessment Officer, and the man who made our internal task force study that was referred to in the previous testimony, and on my left is Ford B. Ford.

Senator SIMON. All right. Thank you.

Senator Metzenbaum, do you want to state your question?

Senator METZENBAUM. I was wondering whether or not each of you might just tell us how long you have been with MSHA and if you came from the industry or where you came from before.

Mr. Zegeer. Yes; I will start out. I have been with MSHA 3 years this November, and I came from the private sector. I am from Lexington, KY. I retired from the mining industry in 1977 and moved to Lexington and I have been doing work as a private consultant. I can make reference to Mr. Simon's question a while ago about foreign mining because I did spend time in China, Russia, Japan, Colombia, and South America visiting mines, in Western Europe and so forth.

Before that I retired in 1977 as the manager of mines in Kentucky for the Bethlehem Steel Corp.

Senator METZENBAUM. For whom?

Mr. ZEGEER. Bethlehem Steel Corp. And prior to that, with the same mines, they were owned by Consolidation Coal Co. I worked from a surveyor to the assistant to the president of Consol from 1946 to 1956, at which time Bethlehem bought the property from Consol. So I spent 31 years in eastern Kentucky, in Jenkins, KY. Prior to that I was in World War II and——

Senator METZENBAUM. Thank you.

Mr. ZEGEER. Mr. Shepich, my Deputy, will give you his life story here in a minute.

Senator METZENBAUM. I am a little bit curious as to whether everybody enforcing the law did indeed come from the industry before they accepted these responsibilities. I find no fault with that except that I find——

Mr. SHEPICH. Mr. Chairman, I have been with——

Senator METZENBAUM [continuing]. Just if it is a fact. I do not know that it is.

Mr. SHEPICH [continuing]. I have been with the Mine Safety and Health Administration or its predecessor agencies, the Mine Enforcement and Safety Administration and the Bureau of Mines, continuously since 1966. I am a career employee in the Government.

Senator METZENBAUM. Thank you.

Mr. BEEMAN. Senator, I have been with the Mine Safety Administration for 11 years. I have been Director of Assessment for the last 4. Before that time I spent 9 years with the General Accounting Office.

Senator METZENBAUM. Thank you.

Mr. FORD. I came to the Commission in December 1985, from the Department of Labor where I had been since August 1981. Prior to that, I was chairman of the California Occupational Safety and Health Appeals Board for almost 5 years and deputy secretary for the California Resources Agency. I am registered in California as both a safety engineer and an industrial engineer.

Senator METZENBAUM. Thank you very much. Thank you, Mr. Chairman.

Senator SIMON. Mr. Zegeer.

Mr. ZEGEER. My opening statement will be brief. I am pleased to appear before you today on this oversight hearing for the Federal Mine Safety and Health Act of 1977. I have really looked forward to this hearing, because I believe indeed that the record indicates that the mining industry is experiencing a definite downtrend in the number of fatalities and injuries associated with mining. This trend is the result of the strong commitment of all segments of the mining community, management, labor and Government, and the trend can continue so long as we renew our efforts and recommit ourselves to achieve even greater improvements in mine safety and health.

Mr. Chairman, I have a prepared statment that I would like to submit for the record, along with some data sheets and statistics that will help add to what opening statement I have. However, before responding to any questions you may have, I would like to summarize my remarks.

I began my involvement in the coal mining industry after World War II and have worked in just about every aspect of mining, including mine rescue work. I have deep and profound respect for the men and women who work in the industry. And I might mention, Senator Metzenbaum, we were the first to hire females underground in 1973 in eastern Kentucky.

I was honored to be chosen and confirmed as Assistant Secretary, as I have always found the safety and health aspect of mining the most rewarding and the most challenging part of mining. I felt that I had a unique opportunity to put into practice what I had learned over the years.

There are three basic elements involved in safe mining: enforcement, engineering, and education—and I also emphasize education. It has been my belief that management's commitment to safety will result in a well-engineered and a properly trained work force.

This, combined with an active enforcement program, is the key to safe mining.

Enforcement is the first duty of MSHA. MSHA is conducting the four underground and two surface inspections at mines required annually. These inspections are mandated. They are one of our highest priorities.

Beginning in fiscal year 1987, we are committed to hiring 90 additional inspectors over our original request. These inspectors can be hired without the use of additional funds and as soon as practical will be productive members of our enforcement program.

Just as the Mine Act mandates not only enforcement but also education and training and technical assistance, I believe that in order to achieve the reduction in accidents, injuries and illnesses the mining community must strive toward and we must also focus on education and training and technical assistance responsibilities.

This has been the thrust of my administration of the Mine Act, a three-pronged approach involving all sectors of the mining community, management and labor and Government. Toward this end, I have directed the increased use of the Mining Academy at Beckley, WV, encouraged the States to use the grant funds which we donate, about $5 million a year, to help promote safety and health in the mines, and initiated several special emphasis programs, programs like REAP, which stands for roof evaluation accident prevention, which involves labor, management, Government and encourages ground support and roof control practices and promotes the use of state-of-the-art technology, and emphasizes the continued safety training.

Regulatory review continues to be one of my highest priorities. Toward this end, I have directed an accelerated review of coal, metal/nonmetal, and technical support standards to, among other things, upgrade the provisions consistent with advances in mining technology such as the proposed requirement for automated temporary roof support systems.

I believe that these regulatory changes can and will enhance safety and health in the mines in the long term. The third aspect of MSHA's responsibility is technical support. Our technical support personnel provide a wide variety of critical services from assisting mine operators in solving their safety and health problems to working with the Bureau of Mines and recommending improved technology and getting into the mines.

In fact, MSHA's expertise is often called upon in international situations, such as the Mexico City earthquake in 1985, in which a team from MSHA, using special mining equipment, located and rescued four people trapped beneath the rubble of collapsed buildings. MSHA is also working as a catalyst in an area that has been of concern to us for over a year; namely substance abuse.

Substance abuse is a known factor in some mining accidents and MSHA organized a committee comprised of labor, management, and government representatives to seek ways to address this tragic problem. We developed and have made available a slide program that depicts these accidents in which substance abuse is a known factor. We are participating in the development of a training film, which incidentally I saw the other day and it looked very good, on how to identify and cope with substance abuse in the work place.

We feel that these cooperative efforts will help control, and hopefully some day eradicate, the problem of substance abuse in the mines.

Mr. Chairman and members of the committee, I have presented some of MSHA's programs and initiatives in the mines. Over the years, we have seen progress. However, as long as one man or one woman is killed or endangered in the mining environment, we still have work to do.

We in MSHA are committed to carrying out the requirements of the act and working with labor, management, and other governmental bodies in continuing to make the mines safer for the men and women who have chosen this occupation.

Thank you very much, and I would be happy to respond to any questions that you might have. In closing, I would like to show two charts that will give you the trends, the reduction in fatalities through the years as we have on the board up here in both the coal industry and the metal/nonmetal industry, where around the turn of the century in coal mining alone there were about 2,500 to 3,000 deaths a year. Last year, not only in coal but in the metal/nonmetal industry was the lowest number of fatalities ever in the history of mining in this country.

Senator SIMON. We thank you, Mr. Zegeer.

Mr. Ford.

Mr. FORD. Thank you, Mr. Chairman——

Senator KENNEDY. May I just ask you, do you have this year's figures?

Mr. ZEGEER. Yes, sir; this year so far in the metal industry, it is 39 and in coal it is 74 to date.

Senator KENNEDY. Well, the coal mining fatalities, if using the same criteria for 1986, what have you to date?

Mr. ZEGEER. In coal it is 74 and in the metal/nonmetal industry it is 39.

Senator KENNEDY. Seventy-four, so we are higher than last year?

Mr. ZEGEER. Yes, sir.

Senator METZENBAUM. And over here it is 79?

Mr. ZEGEER. No, sir; it is 39 in the metal/nonmetal industry.

[The prepared statement of Mr. Zegeer and responses to questions submitted by Senator Hatch follow:]

TESTIMONY OF
DAVID A. ZEGEER
ASSISTANT SECRETARY
FOR MINE SAFETY AND HEALTH
BEFORE THE
COMMITTEE ON LABOR AND HUMAN RESOURCES
UNITED STATES SENATE

September 25, 1986

Mr. Chairman and distinguished members of the Committee:

I am pleased to appear before you today to testify on oversight of the Federal Mine Safety and Health Act of 1977. In my presentation I would like to discuss our efforts to reduce accidents, injuries and illnesses in the nation's mines--efforts that are designed to help further the goal of the Act--to assure that mining may become as safe and healthful as any industrial occupation a man or woman may desire to enter.

At the outset, let me state that we in this Administration are committed to helping to improve the safety and health conditions in the Nation's mines. Secretary Brock and I have a profound respect for the men and women who work in the mining industry--and face a hostile environment. We have seen improvements in the health and safety conditions in the mines; in fact, significant progress has been made. But as long as a single work-related accident, injury or illness occurs, we have more to do.

Throughout my career, I have worked in just about every aspect of coal mining, and before coming to MSHA, I served on a committee commissioned by the National Academy of Sciences to study safety in underground coal mining. My training and experience have led me to conclude that there are three basic elements to safe mining:

-- Enforcement of regulations

-- Education and training, and

-- Engineering

Additional critical elements in safe mining are:

-- The commitment of management to a safe workplace, and

-- The cooperation of labor and management to work together toward a common goal.

The Act and regulations must be enforced, the personnel must be well trained and a mine must be properly engineered. This, combined with management's and labor's commitment to a safe work place is the key to lasting improvements in safety and health in the mining industry.

Last year continued a definite downward trend in the number of fatalities and injuries associated with mining. In fact, last year the industry experienced the lowest number ever of work-related fatalities in both the coal and metal/non-

metal industries. This trend, I believe, can be attributed to the commitment and cooperation of all segments of the mining community--management, labor and government, both federal and state; to the enforcement activities of MSHA and the increased emphasis on education and training and technical support.

I realize that questions have been raised about the reliability of the process by which we determine accident and injury figures. The goal of our reporting system is to record any mining work-related accident, fatality or injury. The credibility of this system is important, and we are open to opportunities for improvement. Therefore in response to concerns raised by members of this committee and recognizing the need for continuous monitoring of our reporting requirements, in January of this year we reemphasized the importance of full reporting. Several new procedures were devised and implemented to aid us in verifying reports and enforcing the regulations effectively.

The accurate reporting of fatalities is an integral part of the accident reporting system. Some fatalities are due to natural causes, not mine-related, and are therefore not chargeable to the mining industry. When chargeability is questioned by the District managers, such cases are reviewed

by the Fatality Review Committee, composed of top career mine safety and health officials. Most of the cases reviewed by the Committee and found to be not chargeable to the mining industry involve heart attacks. This committee, which is a matter of recent public concern, was created in the Department of Interior in 1973 to replace the Natural Death Review Committee. The purpose of the Committee was and is to assume the proper charging of mine-related fatalities.

Prevention of mine related accidents is the primary goal of MSHA and enforcement is a critical element in developing and promoting good safety and health practices and conditions in the mines. Inspections and investigations are mandated by the Act and there is no question that this is the first responsibility of MSHA--to enforce the laws passed by the Congress and the regulations promulgated by the agency that are intended to protect the safety and health of our Nation's miners.

The Mine Safety and Health Act requires four inspections of underground mines and two inspections of surface mines annually. I have made the completion of these inspections one of my highest priorities and wish to assure this Committee that they will continue.

MSHA also carries out a wide variety of other inspection, investigation and compliance related activities such as safety

and health inspections requested by miners, more frequent inspections at specified intervals at mines liberating excessive quantities of methane or other explosive gasses or mines with especially hazardous conditions, and compliance follow-up inspections, to name a few. These activities all serve to supplement our regular inspection activities and add to safety awareness.

MSHA is committed to increase the inspection work force beginning in fiscal year 1987. As stated in Secretary Brock's letter to Senator Metzenbaum of September 9, we intend to meet the Senate Appropriations Committee's goal of 90 additional inspectors using a variety of means without the expenditure of additional funds. The fulfillment of this commitment is one of MSHA's top priorities.

Regulatory review continues to be one of my highest priorities. We have developed a process at MSHA that provides for early public participation in order to conduct a dialogue at the earliest stage before we enter the formal rulemaking process, so that we can develop fundamentally sound regulations that are essential to a meaningful safety and health program.

I believe that, for maximum effectiveness, regulations should be up to date, relevant, practical and easy for the miners and their supervisors to understand. Toward this end, I have directed an accelerated review of our coal, metal/nonmetal, and equipment approval regulations to:

1. Upgrade provisions consistent with advances in mining technology;

2. Include performance-oriented standards;

3. Include compliance alternatives, when possible;

4. Delete irrelevant, duplicative and outdated standards;

5. Eliminate conflicting provisions;

6. Minimize recordkeeping and reporting requirements, and

7. Address known hazards not now covered by regulations.

In the coal area, our proposals have included new technology such as automated temporary roof support systems to better address roof fall hazards, mine monitoring systems for early detection of methane and carbon monoxide hazards and the use of sheathed explosives charges for improved safety.

I believe that we will all benefit by these regulatory changes, and that safety and health in mines will be enhanced in the long term.

MSHA, in recent years, has focused additional attention on education and training to improve safety and health performance. Those who work in the industry need to be aware of the hazards they may encounter and they need to be able to respond to those problems to avoid endangering themselves or their co-workers.

Toward this end, I encouraged the states to use the grants provided by MSHA to help promote safety and health

particularly at small mines which may not have staff or resources to develop their own internal training programs.

I initiated a series of regional meetings for small mine operators to increase their awareness of MSHA technical support and education and training programs, and I directed increased use of the national Mine Health and Safety Academy to train our inspectors, as well as personnel from industry and labor. I also directed that training material be developed that would better prepare miners for situations that they may encounter, such as the slide program which illustrates how miners are losing their lives, the coal mine ventilation awareness program and supervisory safety and training materials.

We have also initiated an effort to address the most persistent problem in the coal mining industry--roof fall fatalities. Roof fall accidents have historically accounted for 50% of all coal mine fatalities. In 1984, we developed the roof evaluation--accident prevention (REAP) program which is sponsored by the coal mining industry, labor organizations, state agencies, and the federal government. It promotes the use of state-of-the-art technology, encourages good roof control practices and emphasizes continued safety training. In 1985 the number of roof fall fatalities was down to 18--this is a record low, but more progress must be made. We have renewed our efforts and commitment and reminded the mining community that our work is not done, but through continued

safety training, utilization of better roof control techniques, and compliance with the regulations, we have the ability to make more progress toward reducing the number of accidents and injuries associated with falls of roof and rib.

Our technical support personnel are actively engaged in approving equipment for use in the mines, working with the Bureau of Mines in recommending improved technology and getting it into the mines, and in assisting mine operators to solve their health and safety problems. In fact, our expertise is often called upon in international situations such as the Mexico City earthquake of 1985 where a team for MSHA, using special mining equipment, located and rescued 4 people trapped in the rubble of collapsed buildings.

Substance abuse is an issue that has been of concern to us because we are painfully aware of the fact that individuals who have a substance abuse problem are a hazard to themselves, as well as to their co-workers.

Over a year ago, MSHA organized a committee of labor, management and government representatives to discuss ways to address the problem. We developed and have made available to the mining community a slide program which depicts those accidents in whch we know substance abuse was a factor. MSHA is also working with the committee to produce a training film on how to identify and cope with substance abuse in the workplace. We feel that these cooperative efforts will help curb the rising tide in this tragic national problem.

Mr. Chairman, members of the Committee, I have presented some of MSHA's programs and initiatives--all of which are designed specifically to improve safety and health conditions in the mines. Over the years, we have seen progress; however, as long as a man or woman is killed or endangered in the mining environment, we have more work to do.

It is my belief that management's commitment to safety will result in a well-engineered mine and a properly trained work force. This, combined with an active enforcement program, is the key to safe mining. This approach has been the thrust of my administration of the Mine Act.

In recent years, we have seen a downward trend in the number of accidents and injuries--a trend which can be attributed at least in part to the commitment of all members of the mining community and the firm and fair administration of the Mine Act. We have the ability to make mining even safer for the men and women in the industry--through continued cooperation and commitment to the principles of enforcement, education and training, and engineering.

Mr. Chairman, members of the Committee, this concludes my prepared remarks. I would be happy to respond to any questions you may have.

Thank You.

MSHA QUESTIONS AND ANSWERS

1. Of the 717 coal inspectors at MSHA as of September 25, 1986, how many came from the "management" side, in the sense that their previous job in the coal industry was as a corporate executive or foreman or as some other kind of non-rank and file employee? How many came from the rank-and-file, i.e., their last job in the industry was some bargaining unit-type position? Please answer the same questions with respect to the 304 metal/nonmetal inspectors that were on board as of September 25, 1986.

   Answer:

   Based on the most recent data available, 63% of MSHA's coal inspectors came from the "management" side and 37% came from the "rank-and-file." In the Metal/Nonmetal Administration, 57% of MSHA's metal inspectors came from "management" and 43% came from the "rank-and-file."

   These figures are not surprising. Traditionally, most inspectors have been hired at the GS-9 level. The U.S. Office of Personnel Management qualification requirements for inspector positions at the GS-9 level require a comprehensive knowledge of mine safety and health. This knowledge is usually gained through experience in a variety of positions, responsibility for mine safety and health, or through experience as a supervisor.

2. The GAO in its testimony at the hearing reported serious problems at the Ohio Metal/Nonmetal field office. According to the GAO, all seven inspectors at that office believe they have been forced to compromise the quality of their inspections, and "the safety and health of miners may be in jeopardy." What is your specific response to these GAO findings? What improvements will you make? On what timetable? By what specific date will the Ohio field office have a full complement of enforcement staff?

   Answer:

   MSHA does not believe that the quality of inspections at mines in Ohio was compromised. On the contrary, the following tabulation shows that the average onsite time for mandatory inspections, which is based on reports submitted by the inspectors, decreased in one size group of mines but increased in two other size groups of mines in FY 1986 as compared to FY 1985:

Mine Size (No. of Workers)	Average Onsite Hours FY 1985	FY 1986	Percent Change
1-9	5.0	5.9	+ 18.0%
10-49	8.3	10.3	+ 24.1%
50+	45.5	40.0	- 12.1%

The total onsite time for mandatory regular inspections at mines in Ohio increased from about 3,700 hours in FY 1985 to about 4,760 hours in FY 1986, an increase of nearly 29 percent.

The Newark, Ohio field office currently has eight inspectors with one additional inspector in the process of taking his physical examination and should come on board shortly. With the additional inspectors authorized by Congress, one additional inspector has been planned for the Newark office in FY 1987.

3. According to the GAO report, one inspector in the Ohio Metal/Nonmetal office is only able to devote one-third the time necessary to check all electrical equipment. Another inspector has eliminated special visits to unsafe mines participating in your "P.A.R." safety program. A supervisor at the Ohio office directed an inspector to report his 27-hour complaint investigation as a mandatory inspection even though he did not inspect any operating section of the mine. How do you respond to these findings? Don't you agree that this situation threatens the health and safety of Ohio miners?

Answer:

The statement by an inspector in the Ohio Metal and Nonmetal office, as cited in the GAO report, that he was only able to devote one-third the time necessary to check all electrical equipment is not substantiated by the average onsite inspection hours given above in our answer to Question No. 2. Although a few of our Metal and Nonmetal mine inspectors hold the position title of electrical inspector, it has always been MSHA's policy that they would also conduct regular inspections of entire mining operations as time permits. Because of the emphasis on the mandatory regular inspections, these inspectors were asked to conduct these regular inspections instead of concentrating their time on the more detailed non-mandatory electrical inspections and this shift in policy has met with some resistance and perhaps resentment on the part of some of them. However, with increased inspectors authorized by Congress, special in-depth electrical inspections, as well as enforcement and compliance assistance activities, will be increased as appropriate in the future.

In view of the emphasis placed on mandatory inspections, MSHA reduced its efforts on the non-mandatory PAR program and other compliance assistance activities, as borne out by the data cited in the GAO report. However, in the case of the only PAR mine in Ohio, MSHA believes that program effort was more than adequate. During FY 1986, a total of 21 enforcement activities were conducted at the mine, for a total inspector onsite time of nearly 1,000 hours, including four regular inspections and six special PAR visits for

a combined total of 10 inspections and special visits. This was two short of the established guidelines for the PAR program. However, MSHA believes that this deficiency was more than compensated by the 11 other enforcement activities conducted at the mine. In any event, the statement that special visits were eliminated was incorrect.

As a result of an internal investigation, MSHA was fully aware that a complaint investigation was reported as a mandatory inspection. MSHA believes that this was an isolated incident where the supervisor made a mistake and the situation has been corrected. In any event, MSHA does not believe that this incident has threatened the health and safety of Ohio miners as the overall on-site inspection time in Ohio increased significantly in FY 1986 over FY 1985.

4. GAO in its testimony reported that MSHA lacks a quality assurance program to assess the work of its mine inspectors. Supervisory review is erratic at best. Inspection reports are inadequate. The Coal Administration conducts no reviews addressing the quality of inspections. Refresher training for inspectors has been cut almost in half. And the imminent retirement of a large number of experienced inspectors may jeopardize the quality of future mine inspections. Why should we have any confidence in MSHA's mine inspection effort when the Agency is so out of touch with its own operation?

Question No. 4 is answered by both Metal and Nonmetal mine administration and by Coal mine administration.

Metal and Nonmetal's answer:

MSHA agrees that supervisory review of inspector performance has not been consistent. A directive has already been issued to require all Metal and Nonmetal mine supervisors to accompany each inspector on a regular inspection at least once a year and this is to cover operations of sufficient size and scope . . . to provide an adequate basis of evaluating an inspector's performance.

MSHA believes that the inspection reports mentioned refer to Safety and Health Field Notes that all Metal and Nonmetal mine inspectors are required to maintain. As a result of MSHA's internal audits which showed that adequate notes were not always taken on inspections and investigations, the requirement was made mandatory in 1984 and all Metal and Nonmetal mine inspectors were subsequently trained on

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the proper techniques of taking notes. MSHA will conduct a review of the notes taken by all its Metal and Nonmetal mine inspectors and, if needed, additional training will be provided on a selective basis.

Revision of refresher and advanced training for Metal and Nonmetal mine inspectors has been a continuing process based entirely on need. Beginning with FY 1977, these inspectors were required to receive two weeks of advanced training annually at the Academy. During FY 1978-79 over 300 new inspectors were hired and advanced training was temporarily discontinued to provide space for entry level training for the new inspectors. With the advanced training resumed in FY 1980 and continued through FY 1984, most of the inspectors were able to complete the majority of courses offered. Because of this, training policy was revised in FY 1985 to require two weeks of training at the Academy every two years. With a more experienced workforce and limited number of new courses being offered, a further revision of this policy to require two weeks of training every three years has been placed in effect beginning in FY 1987. Budget constraints and increased emphasis on meeting mandated inspections have provided the impetus for MSHA to review its training needs. It should be pointed out that all inspectors will continue to receive special training as required in their individual districts during years that training is not received at the Academy. That MSHA inspector training is adequate is supported by GAO's finding that "inspectors are well trained and appear to have the needed skills and experience to do the job."

MSHA is well aware of the average age of its Metal and Nonmetal mine inspectors and the point will be reached in the next few years when a large number of these inspectors will be eligible for retirement. In fact, a detailed study of the retirement eligibility date of all of these inspectors has been conducted and this data will be used as the basis for the hiring of new inspectors in FY 1987.

Coal's answer:

Over the past several years, CMS&H has developed and put in place a vulnerability assessment program. Through the use of audits this program was designed to identify areas of concern and allow us to address them before they become significant problems. We believed that this program adequately addressed the quality of our inspections. It is evident from the recent GAO report concerning quality of inspections that we need to review and strengthen our

efforts in this area. Comprehensive audits of our safety and health and management programs have been made a top priority for CMS&H in FY 1987. Instead of focusing our efforts strictly on results (accident rates, etc.) we intend to expand our audits to look at the process side of our enforcement activities. It is anticipated that this expanded audit program will be in place early in the second quarter of this fiscal year.

While an increase in the number of retirements of experienced safety and health inspectors is anticipated in the next three years, the recent opening of the CMS&H register for inspectors will allow the Agency to hire inspectors at the GS-5, 7, 9 and 11 levels to insure an orderly replacement of the retiring inspectors.

5. The GAO also found that mine operators are substantially underreporting accidents that involve lost workdays. Over half the mines reviewed were guilty of underreporting. For Metal and Nonmetal mines reviewed in Ohio, over 25% of all lost workday incidents were not reported. For Ohio Coal mines, the figure is 11%. Is MSHA doing anything to insure more accurate reporting by mine operators?

Answer:

MSHA believes that the figure of 25% underreporting by the Metal and Nonmetal mines reviewed by GAO in Ohio is not representative for all such mines in Ohio. We realize that GAO has not made the claim that the figure is representative. MSHA has been aware of underreporting of injuries by mine operators for some time as revealed by MSHA's internal audits and as a result, all inspectors have been directed to increase their efforts in checking operator reporting of injuries during all regular inspections. MSHA's internal audits indicate a 10 to 12 percent underreporting by the industry as a whole. To achieve any significant improvement would require our inspectors to spend a great deal more time checking records and interviewing miners. This increased effort would decrease actual inspection time which would be to the detriment of the health and safety of the miners.

In February 1986 a task force commissioned by the Assistant Secretary completed a review of the accuracy and completeness of MSHA's injury statistics. As a result of that study, the Assistant Secretary directed the Administrators for Coal and Metal and Nonmetal to initiate six activities to improve accident and injury reporting. These activities are in addition to the existing audit program and other efforts addressed at reporting. The efforts that were initiated were as follows:

A. Inspection personnel have been directed to issue a separate citation for each instance of a mine operator's failure to report an accident, injury or illness, as required by Part 50. In addition, these violations will be reviewed for a special assessment in accordance with the assessment regulations.

B. An informational memorandum has been issued to all mine operators informing them of MSHA's policy regarding violations of the reporting requirements of Part 50. A copy of 30 CFR Part 50 was enclosed with that memorandum to allow operators the opportunity to reacquaint themselves with the reporting requirements. The memorandum also urged mine operators to post reports of injuries and illnesses as part of their health and safety program.

C. Copies of the Denver Safety and Health Technology Center's "Information Report on Part 50" have been reproduced and made available at all subdistrict offices. This report is used by MSHA personnel and the mining community to more fully understand what must be reported.

D. Inspection personnel have been reoriented to the reporting requirements and to their responsibility to review reporting as a part of the regular mine inspection. MSHA further intends to require inspection personnel, when conducting these reviews, to discuss the importance of reporting with mine personnel and insure that mine operators understand what is reportable.

E. Education and training specialists have been directed to review Part 50 reporting as part of any accident prevention activity.

F. The Office of Technical Support and the Coal and Metal/Nonmetal Administrators are working to more accurately identify and followup on operators who do not report employment in accordance with Part 50.

While remaining committed to insuring the integrity of the accident, injury and illness reporting system, we are concerned that resources not be unnecessarily diverted from other health and safety efforts. We believe that the existing efforts, and the new initiatives outlined above, give a reasonable assurance that operators are complying with the reporting requirements. However, we will continue to monitor this program to determine if further action is necessary.

We should also note that this task force also concluded that MSHA's injury and illness statistics were not completely accurate. However, their report went on to state as follows:

> In spite of this limitation, however, the task force believes that the system provides much useful information. For many years, MSHA injury and illness data have provided the agency's managers with an important base on which to build our safety programs. MSHA has been able, with a reasonable degree of confidence, to spot injury trends within the industry, to identify some recurring types of accidents and injuries, to discover and evaluate problem mines, to run effective "special emphasis" programs, and to recognize the safety successes of some mines. Labor and industry have also found the data to be important to their safety efforts over the years.
>
> Past agency experience supports this contention. The effectiveness of agency programs such as Program in Accident Reduction or Non-Fatal Days Lost, in which injury and illness data play a crucial role, is one example of how useful the system can be. Because the data comes to MSHA directly from the mine operators and is not based on surveys, estimates, or projections, the task force believes that the information in the system is the most reliable occupational injury data currently available.

6. Does MSHA cross-check operator reporting data with workers' comp records, as GAO did when conducting its investigation? If GAO was able to work out agreements with State workers' comp agencies protecting privacy rights, why can't MSHA?

Answer:

MSHA does not cross-check operator reporting data with workers' compensation records on a routine basis. GAO is a special arm of Congress and had to deal with only a limited number of State workers' compensation agencies. The Act does not provide MSHA with free access to records of these agencies and most are reluctant to allow MSHA free access to their records. Perhaps more importantly, these agencies are far removed from mine properties and to check their records on a routine basis would not be possible without a significant increase of inspector resources or greatly sacrificing inspector time for actual onsite inspections to the detriment of the health and safety of the miners. Furthermore, there are situations which are compensable under various state provisions, but are not reportable to MSHA, e.g. recurring back problems. Other problems with compliance audits are detailed in the GAO report.

7. According to GAO, MSHA supervisors as well as union officials generally criticize the $20 penalty for non-reporting as so insignificant that it is effectively an incentive not to report. Last December, Secretary Brock directed MSHA to re-emphasize that it has the authority to assess more than $20 if the conditions warrant special assessment. Has MSHA exercised that authority in the past 9 months? If so, how often and in what amounts? (Please list specific instances.)

Answer:

Since January there have been 185 violations special- or regular-assessed for failure to report accidents, injuries and production/employment as required by 30 CFR Part 50. These assessments totaled $20,724. Specific instances of special assessments include:

Big D Enterprises	$420
Thelma Coal Company	$200
Westwood Coal Company	$50

8. In the last six months, OSHA has twice assessed large fines against Union Carbide for failure to report lost workday injuries. At one plant the fine was over $1 million, and at the other it was $90,000. Don't you agree with OSHA Assistant Secretary Pendergrass that "adequate protection of workers requires not only emphasis on site safety but on accurate recordkeeping as well"? During your tenure as Assistant Secretary, what are the five largest fines you have levied against mine operators for such recordkeeping violations? (Please list specific instances, dates, amounts, etc.)

Answer:

I agree that accurate recordkeeping is important, and at the start of this year we re-emphasized to both mine operators and our inspectors the importance of accurate reporting. MSHA has the most comprehensive occupational accident and injury reporting system in the country and we recognize that constant monitoring of the reporting requirements is necessary to maintain the system's integrity.

During my tenure, the five largest fines levied against mine operators for recordkeeping violations were:

Barnes and Tucker Company	$2,950
Jim Walter Resources	$2,800
Warrior Coal Company	$2,520
Mid-Continent Resources Corp.	$2,100
North American Coal Corp.	$2,100

9. A year ago, Ford B. Ford defended his record before this Committee by citing the MSHA fatality and injury statistics for FY 1985. Even if we ignore the Agency's enormous recordkeeping problems and accept your own figures, the 1986 statistics tell a very different story. Over the first six months of 1986, the fatality rate in Coal mines is up more than 60%. Deaths occurring from roof collapses have reached their highest level since 1982. The nonfatal injury rate also has increased--in Metal/Nonmetal mines it is nearly 10% above last year. What action will you take in the next six months to reduce this dramatic rise in deaths and injuries? I will expect you to report on progress at the next oversight hearing.

Question No. 9 is answered by both Metal and Nonmetal mine administration and by Coal mine administration.

10

Metal and Nonmetal's answer:

Based on preliminary data, the Nonfatal Days Lost (NFDL) injury rate in the Metal and Nonmetal mines increased from 2.73 in CY 1985 to 2.98 in the first six months of FY 1986, an increase of about 9 percent. MSHA does not believe that this increase in injury rate should be used as an indicator that the mines are less safe now than last year. Since 1979, the NFDL injury rate in Metal and Nonmetal mines has shown a significant downward trend from 4.74 in 1979 to the lowest rate of 2.73 in 1985. During this period, slight fluctuations have also occurred from year to year. In the meantime, fatalities in the Metal and Nonmetal mines decreased from 122 in 1979 to 56 in 1985. Based on data to date, a further decrease can be expected in 1986. However, MSHA will continue to watch the injury rate closely and, if necessary, take whatever additional action which may be feasible to correct the situation.

Coal's answer:

As of October 15, 1986, the number of fatalities is the third lowest in the history of the coal mining industry. Even though this is encouraging, we are still making every effort to further reduce these fatalities through such special educational programs as the fatality slide program, the Roof Evaluation and Accident Prevention (REAP) program, and the stretch inspection program. The number of roof fall fatalities has risen but still remains relatively low compared to past history. However, we are not satisfied with the current number of fatalities and the fact that it has risen over 1985. Therefore, in addition to our enforcement effort, we continue through programs such as REAP to educate miners on the hazards involved in all aspects of coal mining. The following is statistical data on fatalities in coal mining since 1982:

	1982	1983	1984	1985	1986
Fatal Rate	.08	.06	.04	.04	.07 *
NFDL Rate	7.12	5.84	5.82	5.38	5.51 *
Roof Fall** Fatalities	44	17	28	15	26
All Fatalities**	104	57	82	54	76

* As of July 1, 1986; all others are CY rates.
** As of October 15 of each year.

10. Bruce Ballard died last September while on the job in a coal mine in Buchanan, Virginia. Although the coroner ruled that the death was due to electrocution, MSHA's fatality review committee reversed the autopsy findings and concluded that the death was not "chargeable" to the mine operator. Was there a medical advisor on this review committee? How long has it been since a medical advisor served the committee? Was a hearing held before deciding to reverse the coroner's decision?

Answer:

There was no medical examiner on the Fatality Review Committee that made the nonchargeable determination in the Bruce Ballard case. However, a more in-depth evaluation was conducted by the Armed Forces Institute of Pathology. The findings of this additional evaluation did not substantiate the coroner's diagnosis that Mr. Ballard had been electrocuted. To the contrary, the more in-depth examination by Eugene R. Harrison, Examiner with the Bureau of Forensic Science, found that the burns on Mr. Ballard's right elbow did not contain metals that would indicate they were electrical burns. This information, along with the findings that the roof bolt machine involved in the accident was in normal condition, led the Armed Forces Division of Forensic Pathology to classify the cause and manner of death as undetermined. Upon re-evaluation of the Bruce Ballard case, including the findings of the second autopsy report, all three members of the Fatality Review Committee agreed that the cause of death was not attributable to work related activities and therefore was not chargeable.

When the Fatality Review Committee was originally formed in 1973, there was a medical advisor available for consultation when deemed necessary by the Committee. However, very few cases involved the medical advisor although he was consulted intermittently until 1978 when 30 CFR Part 50 became effective.

There was not a hearing held concerning the Bruce Ballard case, only a re-evaluation by the Committee.

11. Are you troubled at all that MSHA gave special recognition to this coal company for having "zero accidents" at its Buchanan mine in 1985? Do you think Bruce Ballard's family would agree with your special award approach?

Answer:

The Sentinels of Safety Award given to the Buchanan Mine was based on existing procedures for granting such awards. The operator had accumulated 300,000 or more manhours without a lost-time accident. The mine's accident/injury record was substantiated by an MSHA conducted Part 50 audit and a certified letter from the company attesting to the mine's record.

12. It is well-known that small coal mines are far more hazardous for miners than larger operations. Last year, nearly 80 percent of coal mining fatalities occurred at mines employing 50 or fewer miners, and nearly 60 percent of fatalities were in mines with fewer than 20 employees. Yet in June of this year, the Charleston Gazette reported that you and other top Agency staff met with small coal mine operators to warn them that there may be a public outcry over the existing hazards at small mines and that public pressure might even force MSHA to issue new regulations--although you added that MSHA was not planning any such new regulations. What specific action have you taken in the last year to deal with the small mine problem? What action is planned for the next 6 months on this issue?

Answer:

The series of meetings you refer to were conducted by the Administrator, CMS&H, the Director of Educational Policy and Development, and the Assistant Secretary of MSHA separately and in different locations. The Assistant Secretary conducted a meeting at Big Stone Gap, Virginia, on June 7, 1986, and this meeting was not the subject of the Charleston Gazette article referred to in your question. Other news articles in these areas which reported the meetings came to more positive conclusions.

The purpose of meetings with operators of small mines was to provide information regarding the high rate of fatal accidents in small mines and to provide a forum whereby information could be shared to solve common problems.

Within the past 5 months MSHA held a series of meetings with the operators of mines that employ 19 or fewer miners. This was an attempt to alert the industry as to the seriousness of the problem and to solicit the cooperation of state inspection agencies, operator associations, and individual mine operators to assist MSHA in addressing the problem from their particular point of view.

Additional planned activities include:

1) Continued meetings between MSHA and interested parties.
2) Continual emphasis on the importance of education and training functions at small mines.
3) A transfer of technology and other information to the operators of small mines.
4) Continued emphasis on enforcing all rules and regulations in the same manner regardless of the mine size.

Senator SIMON. Mr. Ford.

Mr. FORD. Mr. Chairman and members of the committee, it is a pleasure to appear before you as Chairman of the Federal Mine Safety and Health Review Commission and to discuss with you the Commission's responsibilities and accomplishments pursuant to its congressional mandate as set forth in the Federal Mine Safety and Health Amendments Act of 1977.

The Federal Mine Safety and Health Review Commission is an independent, adjudicatory agency that functions as an administrative trial and appellate court. Unlike the old-line regulatory agencies such as the Federal Trade Commission, the Interstate Commerce Commission, or the National Labor Relations Board, the Commission does not initiate or prosecute the advesary adjudications that it hears and decides. Issues come before the Commission under the Federal Mine Safety and Health Amendments Act of 1977 through actions of miners, their representatives, mine operators, or the Department of Labor's Mine Safety and Health Administration.

The statutory mandate of the Commission is the continued prompt and fair disposition of controversies before it, whether at the administrative law judge or trial level or at subsequent review proceedings before the Commission.

More than half of the cases before the Commission deal with proposed assessments of civil penalties against mine operators for alleged safety and health violations. These cases include litigation of whether the violation actually occurred, as well as the appropriate penalty. Other classes of cases deal with the review of citations, orders to close a mine, miners' charges of discrimination and requests for compensation.

At the trial level, the Commission currently employs 11 administrative law judges headquartered at Falls Church, VA and Denver, CO. Under the Administrative Procedure Act, Commission judges have heard and disposed of more than 19,500 cases since 1978. During the current fiscal year of 1986, Commission judges will receive and dispose of approximately 1,800 cases filed by the Secretary of Labor, mine operators, miners, miner representatives, and others.

Decisions of the Commission's administrative law judges are final unless within 40 days they are directed for review by the Commission. This review is not a matter of right, but rather the sound discretion of the Commission based on one or more of the following grounds:

A finding or conclusion of material fact is not supported by substantial evidence; a necessary legal conclusion is erroneous; the decision is contrary to law or to the duly promulgated rules or decisions of the Commission; a substantial question of law, policy or discretion is involved; or, a prejudicial error of procedure was committed.

The Commission, composed of five members appointed by the President and with the advice and consent of the Senate and qualified by reason of training, education, or experience, rule on appeals. Although the number of appeals have declined in recent years as more case law has been established, the Commission continued to hear and render decisions on approximately 60 cases an-

nually. Each case is carefully reviewed based on its supporting facts. If either party is dissatisfied with the decision of the Commission, the case may then be taken into Federal circuit court.

Mr. Chairman, that completes my brief overview of the Commission's programs. Our budget for fiscal year 1987 currently pending before the Congress is for $3,919,000 to fund a staff of 62 positions.

I will be happy to answer any questions.

Senator SIMON. Thank you.

The committee, unless there is objection, will operate under the 10-minute rule here on questions.

Senator Kennedy.

Senator KENNEDY. Thank you very much, Mr. Chairman.

Chairman Ford, were you the Assistant Secretary in charge of MSHA in 1982?

Mr. FORD. Yes, sir.

Senator KENNEDY. And did you commission your experts in the various areas of mine safety to rewrite the safety regulations?

Mr. FORD. Yes; we requested regulations review and, where necessary, to change them.

Senator KENNEDY. And were committees formed of these experts to do that?

Mr. FORD. Committees were inhouse, experts drawn from all portions of the Mine Safety and Health Administration.

Senator KENNEDY. And you, as I understand, instructed those committees to develop the best regulations to afford miners the best possible safety, is that correct?

Mr. FORD. That is correct, to where possible modify them so that they could be more easily understood and take advantage of technological changes.

Senator KENNEDY. And your experts complete their assignments and submitted new regulations for each of those areas, did they not?

Mr. FORD. Yes; on a priority basis.

Senator KENNEDY. And were they submitted in May 1983 to the Office of Standards?

Mr. FORD. Sir, I will have to pass that on to Assistant Secretary Zegeer, but I understand that they were in the spring of 1983.

Senator KENNEDY. But you are satisfied that they did a good job?

Mr. FORD. I am satisfied that they put a tremendous effort into it and did a very credible job.

Senator KENNEDY. Then did you direct that those proposed regulations be rewritten, or was that done after you left?

Mr. FORD. I do not recall that, Senator. I would be happy to revisit that period and supply it to the committee.

Senator KENNEDY. Well, Mr. Zegeer, did you order a rewrite of those regulations?

Mr. ZEGEER. Yes, sir; we are continuing on with the program that was in place and still have it moving along.

Senator KENNEDY. And why did you do so?

Mr. ZEGEER. Why are we rewriting the regulations?

Senator KENNEDY. Yes.

Mr. ZEGEER. For several reasons. One is to update the regulations, some of which are 15 to 20 years old——

Senator KENNEDY. No; I am talking about Mr. Ford. Mr. Ford indicated, they brought in experts. They did their review to update the regulations. They did the best possible job. He was satisfied with those rewrites, turned them over to you, and as I understand from your earlier response, you ordered that those updated regulations be again rewritten, did you not?

Mr. ZEGEER. There is a continuing process.

Senator KENNEDY. I am talking about the regulations that were prepared during the time of Mr. Ford's term in office—those regulations. I have them all up here, so whatever you want. These were done during Mr. Ford's term in office. These were done by your shop. These are the industry's recommendations. So, we can spend as much time as you want in jockeying around, but basically you asked for the rewrite of the regulations that had been prepared by Mr. Ford's committees, did you not?

Mr. ZEGEER. Those final rules are beyond us, but those that are in the process from a preproposal to a proposal to a final rule in some cases, sir, takes 3 to 4 years, so it is a continuous process. We have about 13 different rules——

Senator KENNEDY. Did you ask that any of the ones that had been changed by Mr. Ford's group of experts be rewritten, yes or no?

Mr. Zegeer Rewritten for the purpose of rewriting them, no but continuing on with them, yes, sir.

Senator KENNEDY. So, you changed those that had just been the subject of a review by Mr. Ford and a group of experts, to change those, did you not?

Mr. FORD. Could I interject just a moment?

Senator KENNEDY. OK.

Mr. FORD. As the process flows through the Department, review and hearings of proposed modifications are held constantly. I do not remember that any of the regulations on which we initiated regulatory review became final before I left the agency in July 1983.

Senator KENNEDY. Well, let us continue because we are running on the clock here. Mr. Zegeer, do you think the rewrites that were prepared under your recommendations would afford better safety to the miners?

Mr. ZEGEER. Better than what, sir? Compared to what?

Senator KENNEDY. The ones that had been prepared by Mr. Ford's group.

Mr. ZEGEER. Well, as Mr. Ford said, there were none to final rule so we had just continued on with what he had been doing.

Senator KENNEDY. We will have a chance to examine that. We will take what he put out, what the industry recommended, and what you have got.

Mr. ZEGEER. Yes, sir.

Senator KENNEDY. So, we will have a chance to examine that in just a minute.

Mr. ZEGEER. All right. Now, I would like——

Senator KENNEDY. I am just asking you whether you believe that your changes enhance safety for the miners. Do you believe that to be so?

Mr. ZEGEER. Our changes are definitely for the purpose of enhancing safety for the miners, like the self-contained selfrescuer, or roof control——

Senator KENNEDY. OK. We will have a chance to go over it. Has the coal industry submitted its recommendations in connection with the rewrites?

Mr. ZEGEER. On which particular——

Senator KENNEDY. In the areas where you were upgrading or following along Mr. Ford, or whichever word of art you want to use for it. Did they submit——

Mr. ZEGEER. For those which we have invited comments, yes.

Senator KENNEDY. And the rewrites which are put out by your group, do they conform more closely with the recommendation of industry or the ones of Mr. Ford?

Mr. ZEGEER. They would pertain to in some cases what Mr. Ford has in mind, what industry has in mind, what labor has in mind, and what we have in mind. On the automatic temporary roof support, we had that in use in mining 15 years ago and we are trying to get it into the standards today and we are receiving some objections.

Senator KENNEDY. Well, do the mine workers support your rewrites more than they do Mr. Ford's? They are the ones that are——

Mr. ZEGEER. I do not know.

Senator KENNEDY. You do not know?

Mr. ZEGEER. I have no way of measuring how they like our standards compared to Mr. Ford's standards.

Senator KENNEDY. You do not have any information as to whether they have expressed any opinion whatsoever?

Mr. ZEGEER. As far as our standards, yes, I have some opinion on that, as far as the ventilation standards. They are not very happy, the same as industry is not happy with it because we are implementing monitoring systems for detecting gas——

Senator KENNEDY. Well, I would hope you have a chance to look at Mr. Main's testimony. If you have any question in your own mind about how they stand, I hope you have that opportunity and it may be somewhat more clear.

Now, we have examined a series of recommendations, we have taken the expert recommendations, the industry recommendations, and the MSHA recommendations right over here as to particular proposals. For example, in No. 1 on the chart the experts recommended, that persons performing troubleshooting and testing of energized circuits in circuits wear gloves rated to the nominal voltage of the circuits they are working on. The industry did not make such a recommendation and neither did MSHA, despite the compelling evidence illustrating the need for such a provision.

During the period of 1970 to 1983, six fatal electrical accidents occurred while persons were in the process of troubleshooting and testing energized circuits. Investigations revealed that none of the victims were wearing gloves. There you are, right at the top. Here on the chart is the expert recommendations recommending that gloves should be worn; industry, no provivisions for gloves; your recommendations, no gloves. And yet we have a record of where in-

dividuals that were involved in fatalities were not wearing any gloves. Can you give us——

Mr. ZEGEER. With your permission, Senator, Ms. Pat Silvey is the manager of our regulatory reform process, is quite familiar with this. She has a staff of 13 people who work full time, so with your permission, Ms. Silvey can get into the details of this.

Ms. SILVEY. First of all, sir, I think it is very important for the purpose of everybody having a common understanding of where we are in this process, that we understand the process, because with all due indulgence, sir, you have characterized certain of the recommendations as Mr. Ford's recommendations versus Mr. Zegeer's recommendations, and I think it is very important. You are accurate in that we established committees to review the standards, committees at the staff level.

But at the Department of Labor we have a process for reviewing regulations and the committee draft is just the beginning of that process. The final regulatory document which has to comport with certain requirements, certain congressional requirements, certain administration requirements, has to go for approval by the Assistant Secretary who at the time of the regulation that you are discussing now, that Assistant Secretary was Mr. Zegeer.

Now, the point I guess I want to make is that these recommendations which you have on the board before you characterized as expert recommendations. These come from the MSHA committee charged with reviewing the electrical regulations. However, they had not gone through the review process to the Assistant Secretary, they had not—this committee that Mr. Ford established, these regulations had not gone through Mr. Ford's office, so the regulations that we put before the mining public were regulations that had gone through the process, through the Assistant Secretary and through the Secretary of Labor, and that is the process that we have.

Senator KENNEDY. I do not differ with you, that is the process. We are talking about people who are working in mines, we are talking about experts who have made a series of recommendations that gloves ought to be worn. And I think the people that are in those mines do not really care a great deal about what the process is or what the procedure is. The experts who have the greatest knowledge and understanding recommended that gloves ought to be worn, and more than six individuals who died were not wearing gloves, that were working in the areas of the nominal voltage of the circuit that they were working on, energized circuits and equipment.

We find out now that the industry recommends no gloves and so far the MSHA review recommends no gloves, and we are trying to find out whether this agency is doing the job of protecting the people who they are meant to protect. The law is very clear in this area and says you shall not promulgate regulations that are going to be weaker in terms of protecting the miners. I will give you another example.

The experts recommended that persons performing electrical work should lock the disconnecting device with a padlock and place a nametag on the device to alert other miners that the equipment is under repair. The industry recommendations do not require lock-

ing out with a padlock and labeling, and neither do the MSHA recommendations, despite compelling evidence illustrating the need for such a provision. During the period of 1970 to 1983, 38 fatal electrical accidents occurred because of failure to lock out the disconnecting devices prior to beginning electrical work. In addition, five fatals were caused due to confusion over which circuit to reconnect while the repairs were being performed. That is recommendation No. 2 on the chart.

Ms. SILVEY. Excuse me, Senator. The preproposal draft did contain—I do not have it before me now, you do—it did contain a provision dealing with locking and tagging out. Now, it may not have been the precise provision that the experts recommended to the agency, it may not have been that precise provision or it may not have been the precise provision that the labor segment recommendation——

Senator KENNEDY. Well, was it as strict or not as strict, in your belief?

Ms. SILVEY. I do not have the provision before me, but I know it dealt with—there was a provision in the preproposal draft dealing with locking out——

Senator KENNEDY. Well, I dare say that an examination of this would say that it is not nearly as strict. That is certainly the conclusion of the people who have been reviewing this, the one that says here that disconnecting devices which have been mechanically disabled should be considered to be locked out. There is no mandatory locking out.

Now, you are accurate obviously in saying that where we reference this we make a recommendation on it, but there is no way in using the English language you could possibly assume that that provides the same degree of protection as the recommendation came from the experts.

Ms. SILVEY. Sir, I——

Senator KENNEDY. And we have the act itself, section 811 of the Mine Safety Act, says, "no mandatory health or safety standard promulgated under this title shall reduce the protections afforded by existing health or safety standards." We have just taken a couple, because we are in a time limit. We have just taken the first two but those charts indicate constantly all the way down in the series of areas that the recommendations of the experts provide additional safety whereas the recommendations of the industry, and the MSHA more often than not, are providing less protection in terms of the miners.

Ms. SILVEY. Let me just say one——

Senator KENNEDY [continuing]. In just about every instance, and that is not just my observation, it is the miners' observation.

Ms. SILVEY. Let me just say one thing, and I know——

Senator KENNEDY. Well, how about Mr. Zegeer? I am glad to hear you, but I would like to hear Mr. Zegeer, who is in charge of this program. He is the one who is responsible.

Mr. ZEGEER. Thank you, sir; on our regulatory reform process, this is one of many programs that we are into. These are things that we take to the public, the public has two to three chances for public input. That is why we go from the proposed rule.

Another problem we have is like with the Southwest here which Senator Metzenbaum talked about. Currently, we have a self-contained, self-rescuer that weighs about 9 pounds. Larry, if you would bring that over here. We are trying to find——

Senator KENNEDY. If you have any reference to Senator Metzenbaum, you can address him. I am just making an observation of what the experts recommended, what industry recommended and what MSHA recommended.

Mr. ZEGEER. And we take all those——

Senator KENNEDY [continuing]. And I think every one of those, any reasonable consideration of what you finally came up with is weaker than what the experts proposed. That is what the mineworkers think——

Mr. ZEGEER. That is why we want——

Senator KENNEDY [continuing]. And that is what I think just a common understanding of the English language says, and I want to know who you represent, whether you are really representing the interests of the miners whose lives are being threatened and for which the law was passed, or whether you are just taking the easy way out.

Mr. ZEGEER. Sir, I have been in mining for 40 years and I am very concerned about the health and safety of the miner and that is why I am here. We have a lot of regulation that we are very concerned about, including the electrical.

One of the issues right now is the self-contained self-rescuer. We are trying to find a solution for this problem because the self-contained self-rescuer is too heavy for a person in low coal. It weighs 9 pounds and we have a sample here. This is the closest unit we can come up with and we get 60 minutes of protection, but to be effective, as was mentioned in South Africa, it is best to have it on the person.

Senator KENNEDY. That has nothing to do with my question to you about Nos. 1 and 2.

Mr. ZEGEER. Well, the electrical is going through the rulemaking process. It goes——

Senator KENNEDY. But just on Nos. 1 and 2, I just want the record to be clear. I know Senator Metzenbaum has asked about this other matter. I don't want to—my time is up—I do not want to confuse the record on this. We have examined two of the many recommendations here, of what MSHA should have done in the two important areas in which involved safety issues and questions where there have been fatalities, and which is of great concern to miners. You have basically opted for an easier standard than has been recommended by the experts.

If you want to react and respond to that, fine, but otherwise I have to yield the time.

Mr. ZEGEER. Well, I would like to react because we continually upgrade the provisions in our regulations and we consider things to be performance oriented so that they are practical, we delete things that are obsolete, we eliminate conflicting provisions in the act or in the regulations, and the regulations in some cases are 20 years old and we need to take advantage of modern-day technology and this is what we are doing, and the results show that mining is becoming safer and safer, and the regulatory reform process is one

of the very important parts of our program, and this is continuing on, as Mr. Ford mentioned, this is continuing on. And we want comments from the public, we want comments from labor, from industry, and all groups that have an interest in mining health and safety. To go any other way would be wrong, and this is the purpose of the regulatory reform process, to update the regulations that we have and this is what we are doing.

Now, when things start in the state of infancy and you start with the different opinions, then we review them and review them and review them, hoping to come to a common understanding. We get more complaints from industry than we get from any other group on regulations or anything else that we are into, such as mine inspection. These regulations are a very important part of our process and we put a lot of effort into it. Ms. Silvey has a department of technical people that are into this and are full time at it, and it is very important and very serious piece of business and it is no way to diminish safety in any way. We would never be a part of that.

Senator KENNEDY. My time is up, Mr. Chairman.

Senator SIMON. Senator Metzenbaum.

Senator METZENABUM. Mr. Zegeer, my question to you about where you and your associates came from is just another way of raising the same question that Senator Kennedy has just been inquiring about, and that is are the dice loaded against the miners' safety. And I respect the fact that you have been involved in mine safety for 40 years.

The concern that we have is whose side of the table are you on, who are you looking out for.

Mr. ZEGEER. The miner.

Senator METZENBAUM. Well, Senator Kennedy obviously has some questions about that. Let me ask you a question: How many coal inspectors are there at MSHA?

Mr. ZEGEER. Currently, in coal and metal or either one?

Senator METZENBAUM. Coal.

Mr. ZEGEER. In coal right now we have 717; in metal we have 304.

Senator METZENBAUM. How many came—I think the law requires people to have experience in the industry.

Mr. ZEGEER. Five years, yes.

Senator METZENBAUM. How many of those 717 came from the industry and how many came from ex-UMW members?

Mr. ZEGEER. Well, I do not know the difference of the UMW versus non-UMW, but I would say that 85 to 90 percent came from operating mines. I would say that most of them started out in the ranks because in the operating end of the business we bring the supervisors from the ranks of the blue-collar work force, that is where you go to to get your supervisors and then from there probably most of them have come to MSHA. It is a very good source from which to get them. There is no other place to get them.

Senator METZENBAUM. I guess you did not answer my question. I will restate it. Maybe I did not state it well. How many—where they started out really is not too important to me. How many of them came from industry who were either corporate executives or

foremen or were management as compared to how many came from the rank and file?

Mr. ZEGEER. I do not have any figures on that, but I was from the corporate side.

Senator METZENBAUM. I know that.

Mr. ZEGEER. And it is good. You have to come from somewhere and industry is a good training ground. You get definitely committed to helping safety if you are involved in mining operations.

Senator METZENBAUM. Well, I think some of us might have a different opinion as to whether that is the best way or whether the fellow who works in the mine or the woman who works in the mine might better be able to deal with the specifics of the problems having to do with mine safety. But let me go on.

The GAO in its testimony today reports serious problems at the Ohio metal/nonmetal field office. According to GAO, all seven inspectors at that office believe they have been forced to compromise the quality of their inspections and "the safety and health of miners may be in jeopardy." Clearly, more resources are desperately needed in the Ohio field office, but at an Appropriations Committee hearing in February you told Senator Weicker that you were not hiring the 90 new inspectors that Congress had specifically directed you to hire because you believed the agency could get the job done without them.

Now, my question, Mr. Zegeer, is how can you justify jeopardizing the health and safety of Ohio miners by refusing to take the protective actions Congress specifically ordered? If my recollection serves me right, I authored that directive so that there could be no equivocation as to your obligation to hire the additional inspectors. You did not do it. Try to justify it. Why?

Mr. ZEGEER. First of all, our budget was cut to $144 million. If we hired people before September 30, they would have performed no inspection service because once we hire people they go to the academy for 12 weeks and then they become journeymen for 1 year, so there is that time delay that we have.

We were faced, if we had hired people, we would have hired 90 or so and then would have had to furlough those same people with many more because of our dollars spent would have exceeded our budget. So being, let us say, prudent managers, we had to solve the problem and we appreciate your concern to the point where this month our register is open, we have so far, as of yesterday had 725 applications. By the end of this month, we will probably have about 1,500 applications. We will be hiring by the end of September, after we get all these applications, we will be hiring 130 new inspectors by the end of January. But, sir, that does mean that they go to work immediately because once they are hired they must be trained. So, we do not get the benefit of them immediately.

We will have by the end of September next year the 1,201 inspectors and we have the money to do it. But if we had made a move in September or August or July, it would have been the wrong move to make.

Senator METZENBAUM. But did not Congress order you to do it and did you decide that Congress did not know——

Mr. ZEGEER. Well, we did not have the funds with which to do it.

Senator METZENBAUM. We gave you the money. It was in the appropriations bill. There was money for the 90 inspectors. Do not tell me you did not have the money.

Mr. ZEGEER. It was cut 4.3 percent.

Senator METZENBAUM. That was another cut. What you tried to do is you took the money that we provided you for 90 inspectors, and you took it over there for the inequitous Gramm-Rudman bill in order to cover those cuts. That is your administration doing that. We gave you the money in the Senate and said do it, but, no, you had your own ideas that you were going to protect the jobs of some other people that had to be cut under Gramm-Rudman. Is that not what happened?

Mr. ZEGEER. Not in the flavor that you are passing it on to me, sir.

Senator METZENBAUM. Then let me hear your flavor.

Mr. ZEGEER. The way we had it, and we recognize your interest, when the cut came we were faced with 4 furlough days for all of our people and by having 4 furlough days, if we had hired more people, the 90 inspectors, then you are talking about 15 or 20 furlough days and we would have lost ground. But we conducted the four and two inspections and we are on target there and we got the job done.

It is a situation where you have to make a decision based on circumstances at that time and, looking back on it, it worked out very well and we are still going ahead and hiring the 130 inspectors by January 31. We must remember that once we hire an inspector, it does not mean that we get immediate benefit from them.

Senator METZENBAUM. One inspector in the Ohio metal/nonmetal office is only able to devote one-third the time necessary to check all electrical equipment. Another inspector has eliminated special visits to unsafe mines participating in your PAR safety program. A supervisor to the Ohio office directed an inspector to report his 27-hour complaint investigation as a mandatory inspection, even though he did not inspect any operating section of the mine. Do you not agree that this kind of situation threatens the health and safety of Ohio miners?

Mr. ZEGEER. Well, I am not familiar with the details of that incident. I do know that in the Newark, OH, office our supervisor died and then he was replaced, eventually replaced. Now, the circumstances of the PAR Program which is a nonmandatory program, because we know it does a lot of good, and then as far as what this person's work schedule was in one location——

Senator METZENBAUM. There was a 5-month period without a supervisor in that office, was there not?

Mr. ZEGEER. Sir?

Senator METZENBAUM. There were 5 months that that Newark office had no supervisor?

Mr. ZEGEER. Yes, sir; 5 or 6 months maybe.

Senator METZENBAUM. OK. Worse, not better.

Mr. ZEGEER. Well, we had a problem there.

Senator METZENBAUM. The GAO reports that MSHA lacks a quality assurance program to assess the work of its mine inspectors. Supervisory review is erratic, at best. Inspection reports are inadequate. The Coal Administration conducts no reviews address-

ing the quality of inspections. Refresher training for inspectors has been cut almost in half. And the imminent retirement of a large number of experienced inspectors may jeopardize the quality of future mine inspections.

How can we have any confidence in MSHA's mine inspection efforts when the agency is so out of touch with its own operations?

Mr. ZEGEER. May I respond in this manner——

Senator METZENBAUM. Is that part of the reason your figures are going up this year?

Mr. ZEGEER. Sir?

Senator METZENBAUM. Is that part of the reason that the deaths are on the increase on the chart that was up here before?

Mr. ZEGEER. I wish I could positively come up with some conclusion. Our thrust has to be in increasing the efforts of the mining community. One thing that we must all look at, with the number of people we have in MSHA, the number of inspectors, and the number of people in the mining community throughout the country, all that an inspector can spend with each worker is 3 minutes a day and that is it, and the presence of MSHA for 3 minutes with a worker does not guarantee that workers are going to be safe and our own people have safety problems, too.

Aside from that, there must be first a commitment of management to a safe workplace. Second, and this goes back to the National Academy of Science study that I participated in, and I think an old acquaintance of yours, Mr. I.W. Abel was on that committee, we worked for 2 years and we came up with three conclusions, simple conclusions that we all know.

First, you must have a commitment of management, absolutely; second, you must have cooperation between management and labor; and, third continuous training, training, training. MSHA is only a catalyst. We do not own the mines. We do not hire the people. This has to be a commitment from management and cooperation with their workers. They are not MSHA's to hire, nor MSHA's people to supervise. So, we are only there an average of 3 minutes per day per employee, and if we doubled the work force it will only be 6 minutes.

Senator METZENBAUM. Senator Kennedy's questions all had a single thrust, and that is whether there is a commitment on the part of MSHA to do the bidding of industry, or whether MSHA's top priority is truly the mineworkers' safety. And one would gather from the report of the GAO as well as the evidence that was submitted by Senator Kennedy that there is a real question as to that priority and, frankly, the miners of this country, as I think their spokespersons will say here shortly, are very concerned as to whether you are looking out more for industry's concerns than you are for the safety of the mineworkers.

Mr. ZEGEER. Well, maybe I can put your mind at ease with one example, Senator. Three years ago, by June 13, we had a rash of roof fall fatalities. We had——

Senator METZENBAUM. What?

Mr. ZEGEER. Roof falls, the fall of slate and rock.

Senator METZENBAUM. OK.

Mr. ZEGEER. With 16 fatalities at that point. And in 1 day 2 separate accidents. I probably exceeded the authority, that I have

under the Mine Act and gave the directive to MSHA inspectors that any mine that has a worker going beyond roof support, they were to shut that mine down until the owner of that mine came to the district manager with a plan. In 5 weeks, we shut down 13 mines, some of which were large mines. We got our point across. It did give us the benefit of getting our point across on that matter, tough as it was.

We went for a 7-week period without a single roof fall fatality. Early last year, we went for 102 days, the longest period of time ever in the history of mining in this country without a single roof fall fatality. We are going ahead with regulations on automatic temporary roof support which will give more protection. Last year, we had 16 deaths from roof falls. In the forties, from World War II to the late forties, every year we had over 600 deaths by roof falls alone. There is a lot of progress being made on that score and it is good.

Senator METZENBAUM. Let me ask you, Mr. Zegeer, is it the fact, as my staff has advised me, that in the first 3 months of this year, deaths occurring from roof collapses have reached their highest level since 1982?

Mr. ZEGEER. I don't——

Senator METZENBAUM. And from what you just told us——

Mr. ZEGEER. For the first 3 months of this year?

Senator METZENBAUM. Yes.

Mr. ZEGEER. I know last year it was 16 roof falls and 2 rib rolls, 18 which was at that time the lowest number ever. I think this year we have a total of 26 roof falls and rib roll fatalities.

Senator METZENBAUM. For the total year?

Mr. ZEGEER. To date we have I think 26.

Senator METZENBAUM. My staff tells me that the source on this was the New York Times, and they could not be wrong. [Laughter.]

Mr. ZEGEER. No, sir; I would agree with you. Mr. Franklin who is here today would never be wrong.

Senator Metzenbaum Well, I guess in all fairness to the New York Times I had better broaden the base. I see that it is an Associated Press report, and I know they certainly would not be wrong, in which they say that deaths occurring from roof collapses in the Nation's coal mines are running at the highest level since 1982, with 11 fatalities reported for the first 3 months of 1986, Federal officials say. The Mine Safety Health Administration reported Tuesday that a total of 28 people were killed in mining accidents in January, February, and March as against 67 fatalities for all of 1985.

In fact, they quote you here: During the first quarter of 1985, only one roof fall fatality occurred, the agency administrator, David Zegeer said, we had a total of 18 roof fall fatalities for the entire year. The mine workers are quoted as saying the agency does not enforce Federal mine safety regulation as stringently in smaller mines as it does in operations with more than 50 employees. But be that as it may, that sort of rebuts, it certainly puts into question your indication that you are doing such a great job with respect to roof safety.

Mr. ZEGEER. Well, that was our press release, Senator. As far as that issue, we put that out to wake up people in the mining field.

In June, the Administrator for Coal, and the person in charge of training and education—I will not call it a SWAT team, but we went through southern Appalachia and I ended up in Big Stone Gap, VA, and we had—I had about 160 small operators there to bring the problem to them. This is a problem. We put a lot in training and education. We have also alerted people about the dangers of methane gas, to the point that last month for the first time ever we have a methane gallery, a big trailer that we are taking all over the country putting on methane explosions to show people the power, the danger in methane gas. And I have a picture here that I would submit to you that is a demonstration that makes people more sensitive and more cautious about the dangers of methane gas and roof control and electricity that Senator Kennedy was talking about.

All of these are problems in mines that we must address and this is what we are into and this is our mission and we have to do it through training and education, and MSHA alone cannot do this. There has to be the commitment of industry and there has to be this cooperation with the labor and work force, absolutely.

Senator METZENBAUM. My time is up, Mr. Zegeer, but I must say that you talk about the commitment of industry and the commitment of the union and the commitment of whomsoever else. When you have a Federal law, that law is totally useless if there is not that commitment to enforce the law that is so necessary. I think the subject of this hearing today relates very much to the question of whether or not this administration and you as its spokesperson in this area does have that commitment or is more concerned about protecting the industry, I am not sure you have made a persuasive case here.

Mr. ZEGEER. Well, Senator, let me put it to you this way: If I personally did not have this commitment, my old Kentucky home looks pretty good at times and that is probably where I would be. But I have been here for 3 years and this is the most exciting, challenging experience I have ever had. I have been through mines all over the world. I have recovered bodies in mine explosions in Kentucky. I have fought mine fires. I have seen slave conditions in foreign countries in mines. And if I did not have the commitment, I would not be here.

Senator METZENBAUM. Well, I know that my time is expired, but in view of this whole move for the industry position on these regulations and away from the experts' recommendations——

Mr. ZEGEER. May I take exception to that?

Senator METZENBAUM. Sure.

Mr. ZEGEER. These regulations, as Ms. Silvey has been saying, are bringing together information and ideas from everybody. These regulations are more strict than they have been before. The particular points here on electrical or self-contained, self-rescuer or ventilation or roof support or whatever, it takes a long process to bring these ideas together. Everybody has an opportunity to have their input. We want their input. We want better regulations. We get criticism, a lot of criticism, but there are too many modern technologies available today that we need to take advantage of, such as measuring methane gas in a mine, such as measuring carbon monoxide gas in a mine. We have the technology and we

need to take advantage of it. There is a lot of mechanical equipment that is available today that we need to implement, and we can only get it done through regulations.

If we go out and start shutting mines down for people going beyond roof supports, probably I am exceeding my authority. But still we make a point and we are putting a major thrust on training and education to make the same point. As far as not knowing what is going on in the field, we have 16 districts—6 in metal—10 in coal, and I have been in every one of them in this country, from Vermont marble mines to Arizona copper mines and the salt mines of Louisiana, all over the country.

We have problems out there, we have a hostile environment to deal with, and we have to reach the people. The trends, the improvements are real. Some people try to distort them, but they are real. But it is not what MSHA did, it is what the entire mining community did, good or bad, and it has to start with the commitment of the owners of the mines themselves and they must work in a cooperative effort with the labor and other people.

Again, we are only a catalyst and that is all we are. We enforce the law the best we know how and we gain nothing by circumventing the law.

Senator METZENBAUM. You justify your results, Mr. Zegeer, and the fact is that the roof collapses were up in the first 3 months and the fact is that the deaths are up in this chart that was behind me in the early part of 1986, and on the basis of judging you on accomplishment one has to be quite concerned.

Now, I yield the floor back to the chairman before he cuts me off precipitously.

Senator SIMON. I shall not do that. But let me say I share the concerns expressed by Senator Kennedy, and I think you are getting a feel for where the problems are here. When the experts used Senator Kennedy's charts right back here, and the experts I assume include some input from coal miners themselves—is that correct or is that not correct?

Mr. FORD. The way it has been set up, the internal work force is the Mine Safety and Health Administration.

Senator SIMON. OK. But do the coal miners have an input into the development of that initial regulation?

Mr. FORD. A good portion of the MSHA internal work force were former miners. All MSHA inspectors have had to have underground mining experience or surface mining experience before they came on board. The only reason I jumped in there was because that is where we started. We started with that package initiated in 1982. Assistant Secretary Zegeer inherited that chain of events as it came through. They all have to go to public comment and so forth. That is the only——

Senator SIMON. I understand, but somehow we are in the process of the public comment period—who makes that final decision? Mr. Zegeer, do you make the final decision on——

Mr. ZEGEER. Once they have gone through the whole process. But I remind you that these regulations are still open. They are not closed, by any means. They go through the process, they go for a proposal, then we get public comment, then they go to final rule,

they go to OMB, they go to the Department of Labor before they are submitted, and then they go across my desk.

Senator SIMON. Well, let me ask this: Is OMB vetoing your agency's or the expert's decisions. Is OMB the tool of industry?

Mr. ZEGEER. It has not got to that point yet. These regulations are in the infancy, they are in the talking stage.

Senator SIMON. So these are all recommendations When OMB gest through with them, they will look even weaker.

Mr. ZEGEER. I would not concur with that.

Senator SIMON. Well, I understand——

Mr. ZEGEER. What do we gain by weakening regulations in mining, in mine health and safety? We gain nothing by doing that. What we want to do is to make our regulations simple, easy to read, easy to understand, without diminishing safety, and it has to be with that purpose in mind. Anybody that gets into the regulatory reform process with the intent of gutting the regulations is wrong, and that is not our intent, that is not Ms. Silvey's direction. It is a heavy duty and you have to deal with all segments of the mining industry and get their thoughts. That is why it takes 2 and 3 and 4 years to get a set of regulations to final rule, because we go through all these steps and procedures.

Senator SIMON. All right. There is concern clearly on the part of these members of this committee that the regulation drafting process is tilted not in the direction of safety, but in the direction of some people in management, and I recognize that you disagree with that, but I think you have to understand that there is a concern.

Now, let me get into some statistics. In my old House district in deep southern Illinois, in the month of July five people were killed in mine accidents. Now, that is reported—I know the State agency has all those five fatalities. Are all five fatalities included in your totals?

Mr. ZEGEER. I would say, not knowing which ones, I think the three supervisors that were killed during the vacation period, there was an electrocution a few weeks before that, probably the five that you are referring to I would say are in the number.

I do know that we have counted over the past 8 years 53 more fatalities than the States themselves did. I remember the triple fatality in Illinois. I remember the electrocution. And if you would remind of the fifth one, I would tell you if it is in there or not.

Senator SIMON. There were four from a roof fall, one from falling material and one from electrocution. I would be interesting in your following through and just let me know whether they are all included.

Does the name Bruce Ballard mean anything to you?

Mr. ZEGEER. Yes, sir.

Senator SIMON. Tell me what you know about Bruce Ballard.

Mr. ZEGEER. In September of last year, Bruce Ballard was found dead in a mine in Buchanan County, VA. A month or 5 weeks later, a preliminary decision was made that he was electrocuted. The State Department of Virginia never considered his death a mine accident-related death. There was no power on the equipment. The workmen, some of the workmen in the mine, as Ballard

was being brought out, said that he was not electrocuted. They do not know why he died.

We counted it in October as a mine fatality. It is in our number for last year of 67. When we closed out our books in December of last year, the number of 67 included the Ballard incident. In April of this year, we have a review committee who reviewed all the information submitted, our review committee ruled, based upon what they had presented to them that his death was not due to mining.

A couple of months later, I was informed that there was an article in the UMW Journal and then we read that article and then pursued the question of what happened, and there has been a lot of questioning going on on the article itself and the incident that happened with Mr. Ballard.

Senator SIMON. My understanding is that the company originally reported he died of a heart attack and that the MSHA inspector sent to investigate was instructed not to issue a control order to secure evidence, something that is ordinarily done. Is that correct?

Mr. ZEGEER. If I remember, the order that is served is to not endanger in case of fire or something like that, or MSHA in some cases has taken over the responsibility of a mine, and there are other orders that are issued to preserve the evidence so that it is not disturbed.

This roof drill was examined by electrical people. It was found to have no ground. It was not energized. Later, during the next shift, since it was concluded that the man was not electrocuted, the machine was put back into operation without incident, which later I presume supported the committee's decision that this could not have been electrocution since the power was not on the machine in the first place, and then also the machine did operate without incident following that.

Senator SIMON. But is it not true that ordinarily when you have a fatality like this, that there is an immediate control order to secure evidence on the scene, and your inspector, Carl Duty, was ordered not to issue such a control order?

Mr. ZEGEER. This is not true in all cases.

Senator SIMON. Well, I am asking not in all cases. I am talking about this case.

Mr. ZEGEER. It was not done in this case and it is not required in all cases.

Senator SIMON. Well, my understanding is that ordinarily it is fairly routine and that it was not issued in this case because Carl Duty was under instructions by his supervisors not to do it. This particular machine that you are talking about, in the meantime who knows what kind of corrections were made on that machine before it was ever inspected.

Senator Kennedy.

Senator KENNEDY. Mr. Zegeer, is it not true that MSHA permits the conventional roof support systems, while the UMW experts want to forbid conventional support systems as the primary means of support in a mine?

Mr. ZEGEER. I'm sorry, sir, I——

Senator KENNEDY. Do not your regulations permit the conventional roof support systems?

Mr. ZEGEER. Do you mean timbering?

Senator KENNEDY. Yes.

Mr. ZEGEER. That and roof bolting both, yes.

Senator KENNEDY. And the UMW wants to forbid conventional systems as the primary means of support of the mine, they want the ATRS systems, do they not?

Mr. Zegeer I hope so, because that is in our regulations on roof support, ATRS, and we would hope that they would support that, yes, sir.

Senator KENNEDY. But you still permit conventional roof systems?

Mr. ZEGEER. In some cases, yes, sir.

Senator KENNEDY. Well, if ATRS is the right system, why do you permit the conventional?

Mr. ZEGEER. The ATRS, sir, is to give the roof drill operator added protection while he is putting in roof bolts, that is when you drill holes in the roof and insert sort of a toggle bolt. The conventional method of support as referred to would be posting or straight posts. Now, in long-wall mining you do not use roof bolting, you use what are called shields or longwall chocks to support the roof, and then you retreat the chocks as you extract the coal and it negates the need for timbers or roof bolts.

Senator KENNEDY. In one type of mine do you use conventional roof support systems and another type ATRS? Is it not a fact that the smaller mines are permitted to use the conventional systems?

Mr. ZEGEER. Senator, if I may, ATRS is a supplement to roof bolting. It is just a piece of machinery that you take with you as you drill holes and put in the bolts. It is a protective device in lieu of safety posts, and then the most common roof-support practice in mining today is roof bolting which got its start in the late forties, and then the straight posts and the timbers are either a supplement to it or are used by themselves. Bolting is the most common source of roof support today.

Senator KENNEDY. Well, we will have an opportunity to hear from Joe Main on that. It is my understanding that, even though there are recommendations by the miners themselves and mineworker experts on how to provide the greatest degree of safety for those roof support systems, that they have not been drafted into the MSHA regulations. I will let get him into it because there is another area that I want to pursue.

Do you recall a memorandum you wrote to Mr. Lamonica on December 19, 1985 concerning the indictment of the Peabody Coal Co.?

Mr. ZEGEER. Yes, sir.

Senator KENNEDY. And in the memo you criticized the decision to indict the company and its representatives, did you not?

Mr. ZEGEER. I criticized three things. First——

Senator KENNEDY. Did you not criticize the decision to indict the company?

Mr. ZEGEER. That is right——

Senator KENNEDY. All right.

Mr. ZEGEER [continuing]. Plus the fact that I critized Lamonica for not keeping me apprised for 13 months as to what was going on, and also when this was done the decision to indict came as a

surprise, and did not afford me, being responsible, did not afford me a chance to review what was going on——

Senator KENNEDY. All right.

Mr. ZEGEER [continuing]. Plus the other part of it is that in going about it in this manner, in reviewing the case I did not want to see us come up with something that we were not communicating together on.

Senator KENNEDY. Fine. I will ask that the full memo be included as part of the record.

Senator SIMON. It will be included.

Senator KENNEDY. I would like to ask, Mr. Chairman, as well that the charts be included as a part of the record and leave it open to the panel here if they want to submit any additional information in regards to it.

Senator SIMON. It will be included.

[The memo and charts referred to follow:]

U. S. Department of Labor

Mine Safety and Health Administration
4015 Wilson Boulevard
Arlington, Virginia 22203

December 19, 1985

MEMORANDUM FOR JOSEPH A. LAMONICA

FROM: DAVID A. ZEGEER

SUBJECT: Peabody Case No. 84-0046

Pursuant to our meeting of November 25 in which you informed me of the indictment of officials of the Peabody Coal Company, Case No. 84-0046, I have reviewed the file and have made the following observations regarding this case.

I have had quite a lot of experience in installing arches in haulageways and know that each situation is different and requires a subjective evaluation based on the prevailing mining conditions. For example, in some cases, if ventilation is directed over the fall, the roof can be bolted with stopers before the fallen material is cleaned-up. This can be a hazardous means of installing supports, since a second fall could occur during this process. Furthermore, once the fall is loaded-out, overhanging ribs can pose a problem. Prior to installing arches, the preferred approach would be to ensure that the roof and ribs are thoroughly scaled. However, this procedure, as in the Peabody case, is hazardous per se and cannot offer complete protection. Therefore, I intuitively find myself in agreement with Mr. Hansen in that bolting the entire area along with the brows and ribs that arch the fallen area is a very hazardous operation.

A good deal of information in the file supports this observation as indicated by the information contained in the April 1982 Coal Age article by Roger M. Hansen, "Arches Can Ease Roof-Fall Repair." The article's theme is that use of arches is safer than rebolting, an argument which indicates that supporting the roof before arching would constitute a greater hazard. The same article also mentions that the bolting operation above falls is a dangerous procedure and then mentions that no bolting, back-filling, or cribbing is needed and that future maintenance is eliminated by the use of the arches. These statements contradict the assertion that it is wrong, and in this particular case criminal, to install arches without having first rebolted the area. Another statement made in the same Coal Age article is: "The unpredictable nature of installation techniques and loading conditions at any given mine prevents this (rebolting) practice. They generally urge individual mine operators to review

available data and develop specific procedures for their own application that meet all requirements for safe work conditions." Furthermore, in Mr. Hansen's December 13, 1983 letter to John A. McCormick of the Bruceton Safety Technology Center, he makes several statements that are also pertinent:

(a) "Experience over the years has proven that using arches to repair fall areas is safer and faster than rebolting and cribbing. The hazards associated with tilting an arch into place are no worse than those of setting a temporary safety jack. In fact, the proper procedure is the same for both - set the base first and then tilt toward the face. In the unique circumstances around fallen areas, installing roof bolts can actually be more hazardous than setting arches."

(b) Citing the salient points that need to be considered, he states:

"Arches used in roof fall repair can be considered to act as (or in lieu of) permanent roof supports. The contribution of bolts or other materials can be disregarded once the arches are in place, even if they do not directly contact the roof."

"Arches can safely be installed without prebolting and this, in fact, eliminates the even greater hazards associated with installing bolts. Setting an arch is no different nor any more hazardous than setting a temporary roof jack."

It is my opinion this whole scenario was strictly a judgement call as to which installation technique was safer, given the conditions at that mine, and whether or not the rock would fall. From the information available, it appears that both Johnnie Jones and Elmer McCuan can give testimony concerning attempts to bring down the rock which subsequently fell and caused the death of the foreman. Had the rock not fallen, the judgement call would have been good. Consequently, I feel that the Peabody case constitutes pursuit of an adverse result of a judgement, rather than an action involving criminal intent. Further, I cannot understand the steps being taken to indict the individuals involved in this incident, nor can I see how we can hope to improve the safety performance of mining personnel if we inhibit their ability to make the judgemental decisions so necessary in the day-to-day situations which they encounter.

In view of the above discussion, I hope that you are formalizing review procedures for possible criminal actions which will preclude situations like this in the future.

David A. Zegeer

MINE SAFETY AND HEALTH ADMINISTRATION

DATA CHARTS

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3. M/NM & COAL NFDL INCIDENCE RATES FOR THE PERIOD 1962-1985

4. PERCENT TOTAL COAL FATALITIES IN SMALL MINES (1-19) FOR THE PERIOD 1980 - 2ND QUARTER 1986

5. TOTAL NUMBER OF INSPECTIONS

6. NUMBER OF INSPECTIONS PER MINE

7. NUMBER OF VIOLATIONS ISSUED

8. NUMBER OF INSPECTORS

9. NUMBER OF MINES

10. NUMBER OF MINES PER INSPECTOR

11. PERCENT S&S ISSUED TO TOTAL VIOLATIONS FOR M/NM AND COAL FOR THE PERIOD 1981 - 1986 3RD QUARTER

12. COMPARISON OF FATALS AND PRODUCTION AT COAL MINES FOR 1961 - 1985

13. TOTAL COAL PRODUCTION

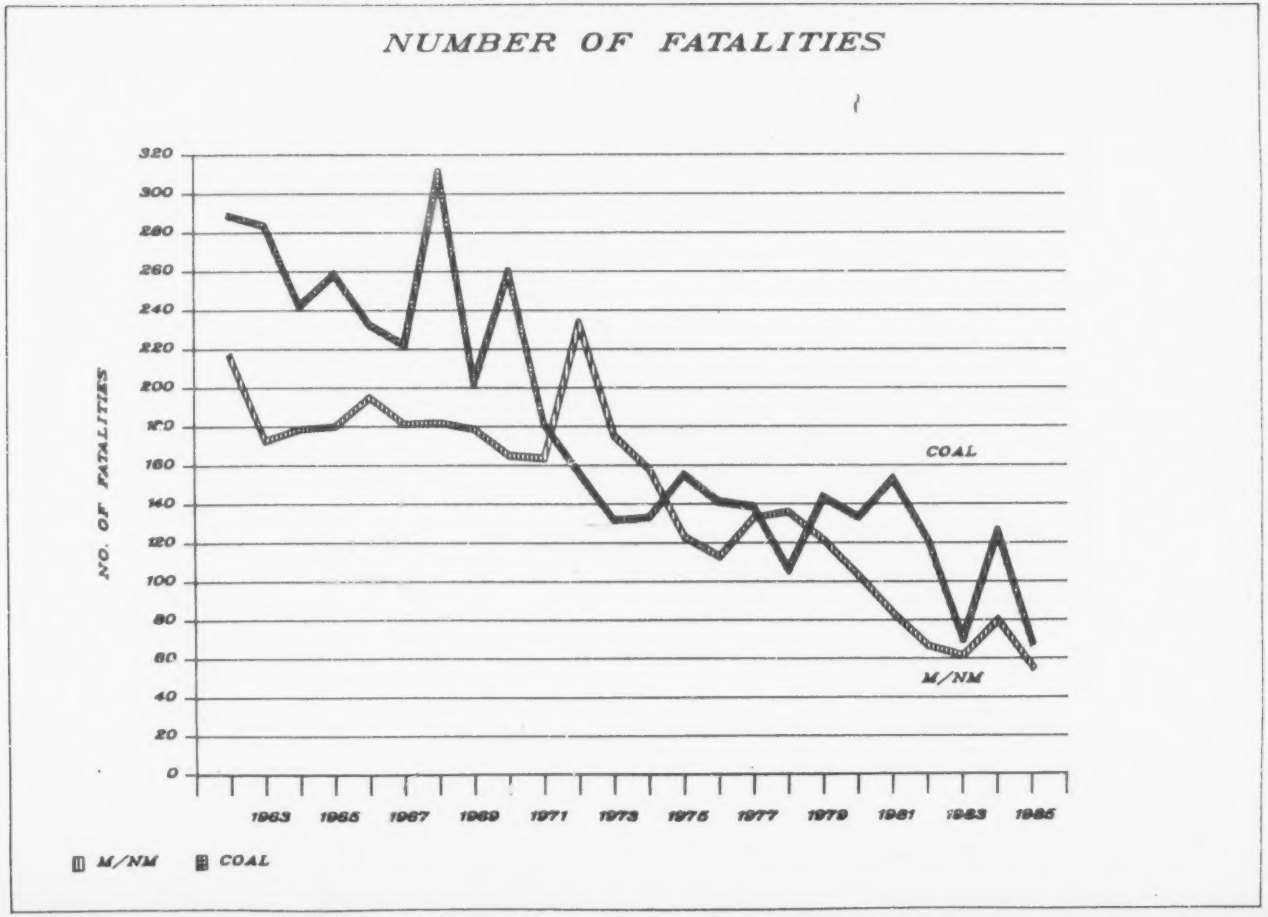
14. COAL & M/NM AVERAGE NUMBER OF MINE EMPLOYEES

LEGEND -

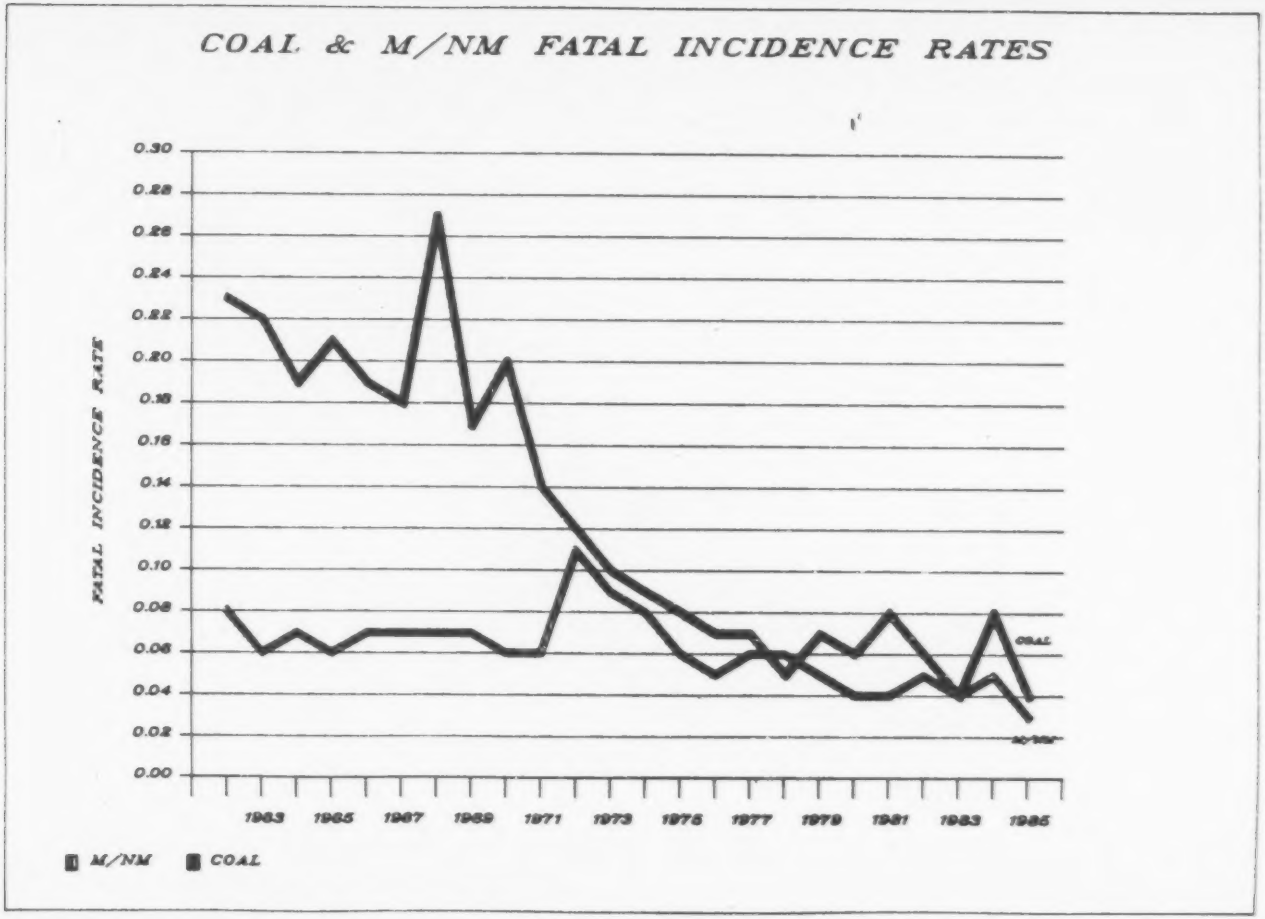
M/NM - METAL/NON-METAL

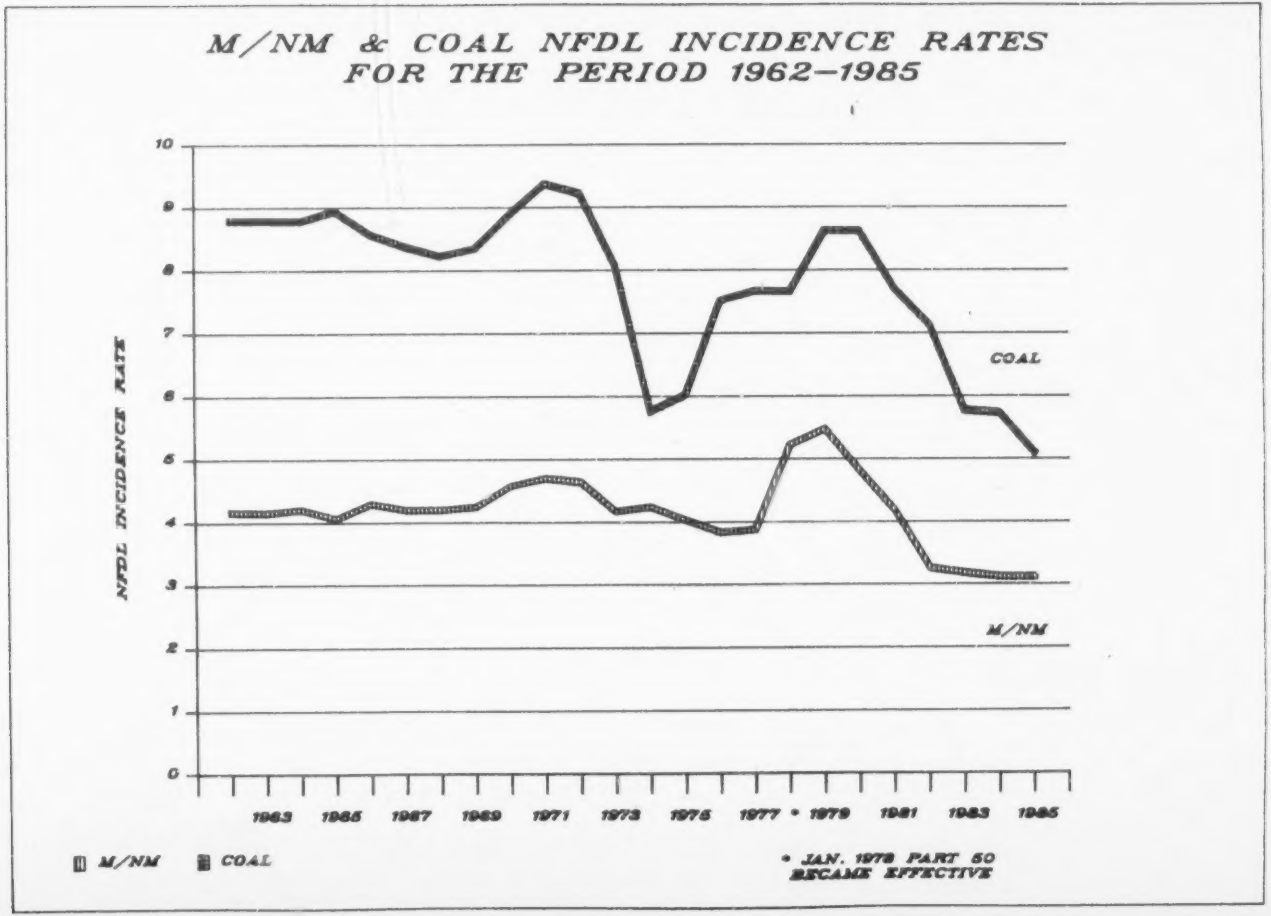
NFDL - NON-FATAL DAYS LOST

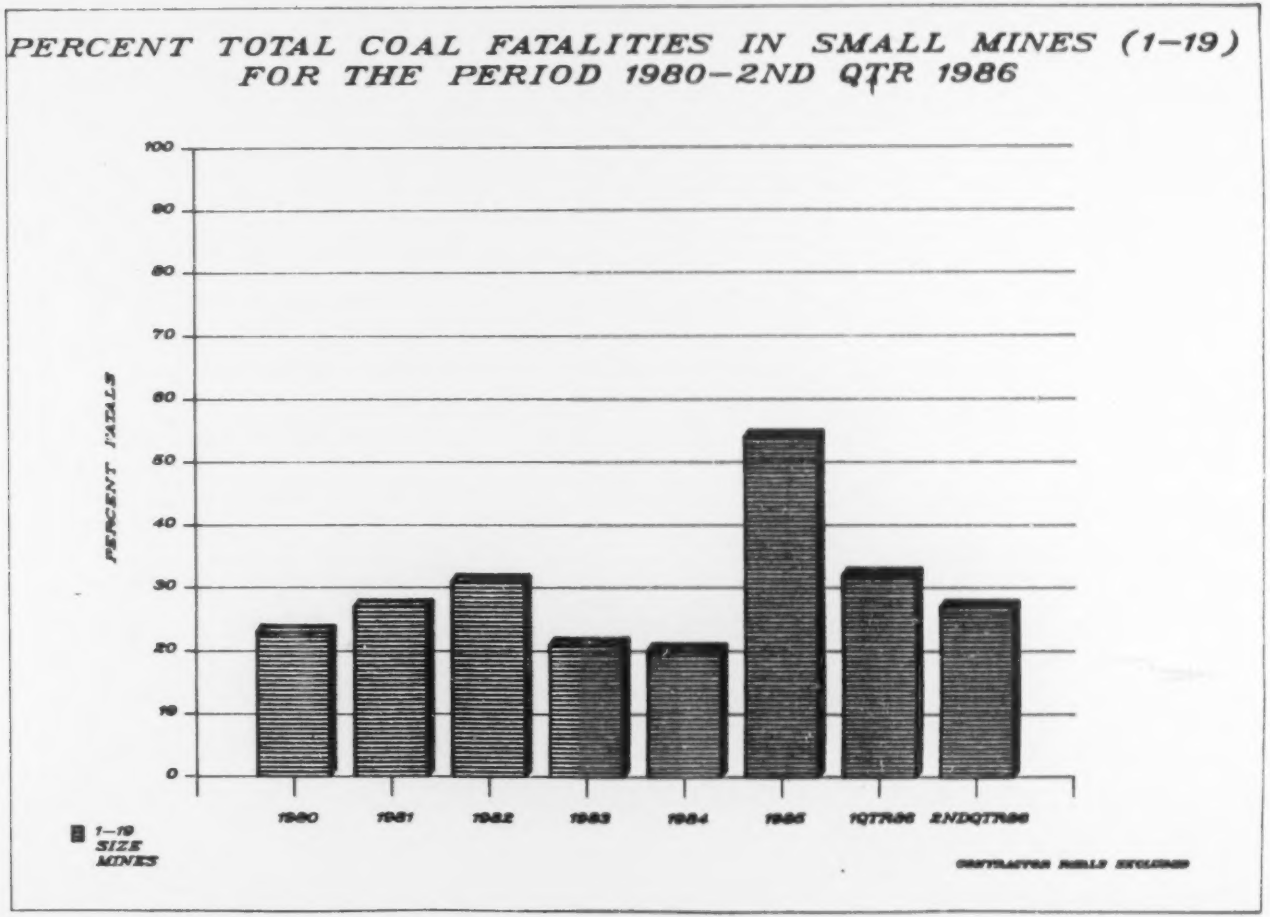
S&S - SIGNIFICANT AND SUBSTANTIAL

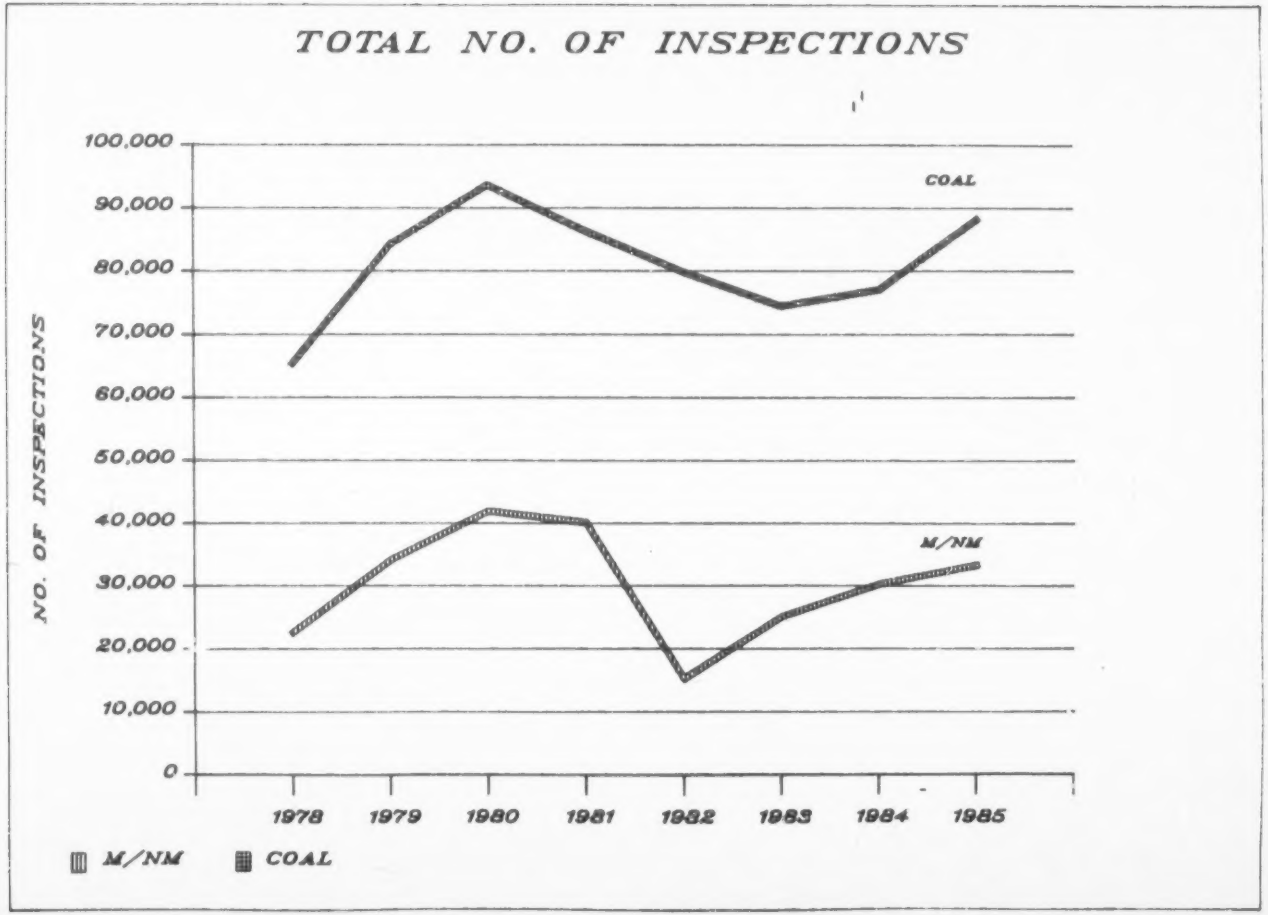

NUMBER OF FATALITIES
NO. OF FATALITIES
320
300
280
260
240
220
200
180
160
140
120
100
80
60
40
20
0
1963
1965
1967
1969
1971
1973
1975
1977
1979
1981
1983
1985
COAL
M/NM
M/NM
COAL

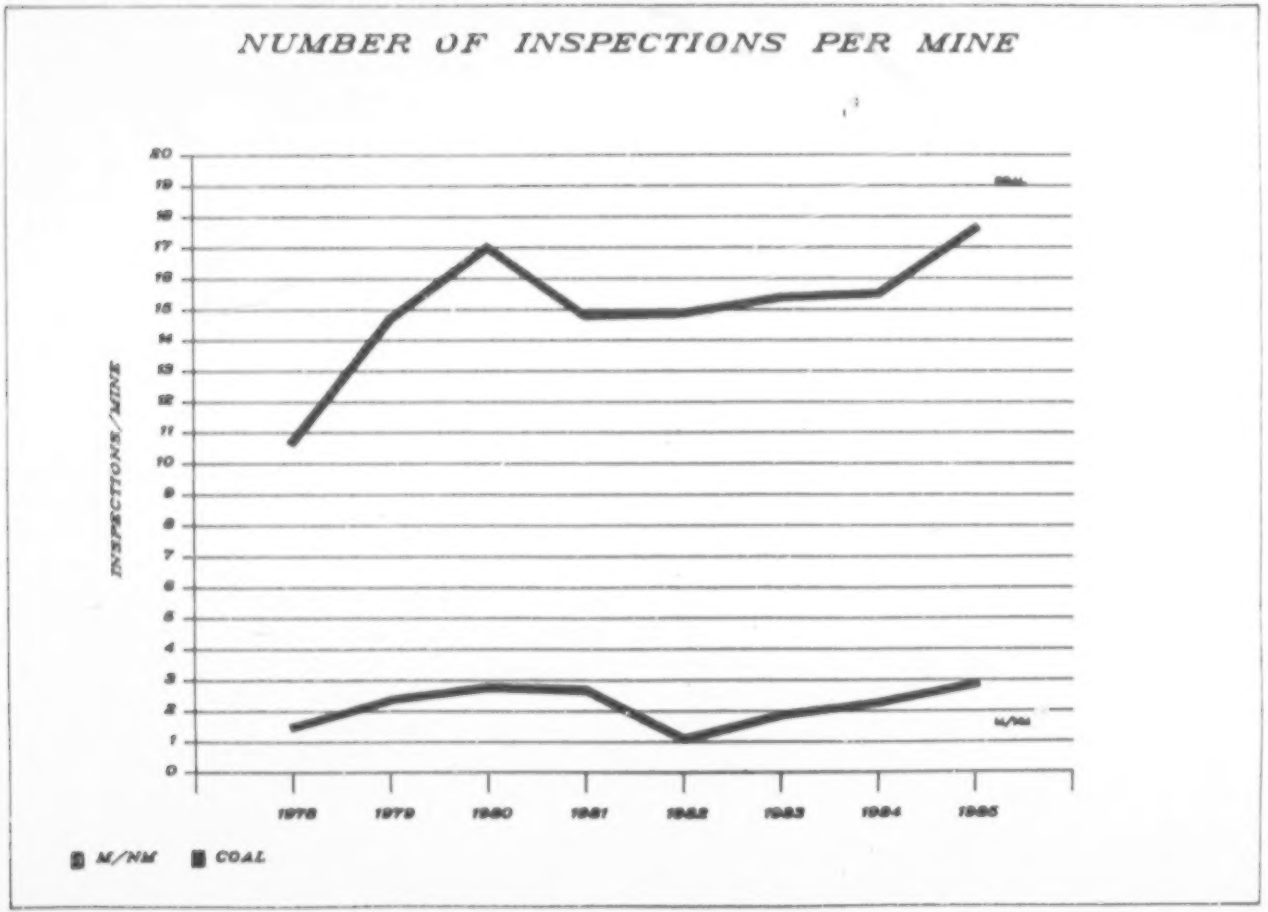
64-851 O—86—4

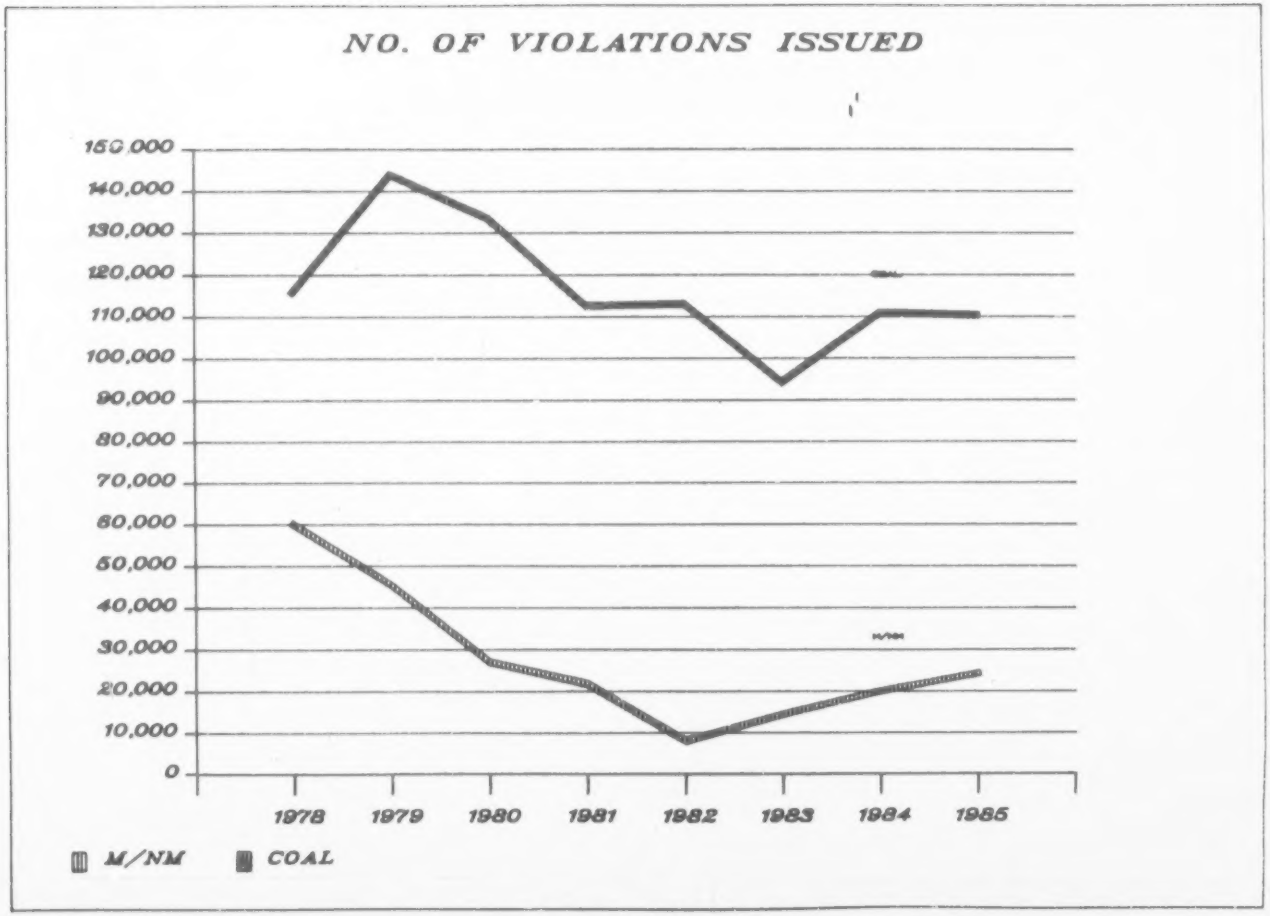

COAL & M/NM FATAL INCIDENCE RATES
FATAL INCIDENCE RATE
0.30
0.28
0.26
0.24
0.22
0.20
0.18
0.16
0.14
0.12
0.10
0.08
0.06
0.04
0.02
0.00
1963
1965
1967
1969
1971
1973
1975
1977
1979
1981
1983
1985
COAL
M/NM
M/NM
COAL


M/NM & COAL NFDL INCIDENCE RATES
FOR THE PERIOD 1962–1985
NFDL INCIDENCE RATE
10
9
8
7
6
5
4
3
2
1
0
COAL
M/NM
1963
1965
1967
1969
1971
1973
1975
1977 * 1979
1981
1983
1985
M/NM
COAL
* JAN. 1978 PART 50
BECAME EFFECTIVE


PERCENT TOTAL COAL FATALITIES IN SMALL MINES (1–19)
FOR THE PERIOD 1980–2ND QTR 1986
PERCENT FATALS
100
90
80
70
60
50
40
30
20
10
0
1980
1981
1982
1983
1984
1985
1QTR86
2NDQTR86
1–19
SIZE
MINES


TOTAL NO. OF INSPECTIONS
NO. OF INSPECTIONS
100,000
90,000
80,000
70,000
60,000
50,000
40,000
30,000
20,000
10,000
0
COAL
M/NM
1978
1979
1980
1981
1982
1983
1984
1985
M/NM
COAL


NUMBER OF INSPECTIONS PER MINE
INSPECTIONS/MINE
20
19
18
17
16
15
14
13
12
11
10
9
8
7
6
5
4
3
2
1
0
1978
1979
1980
1981
1982
1983
1984
1985
M/NM
COAL


NO. OF VIOLATIONS ISSUED
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140,000
130,000
120,000
110,000
100,000
90,000
80,000
70,000
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0
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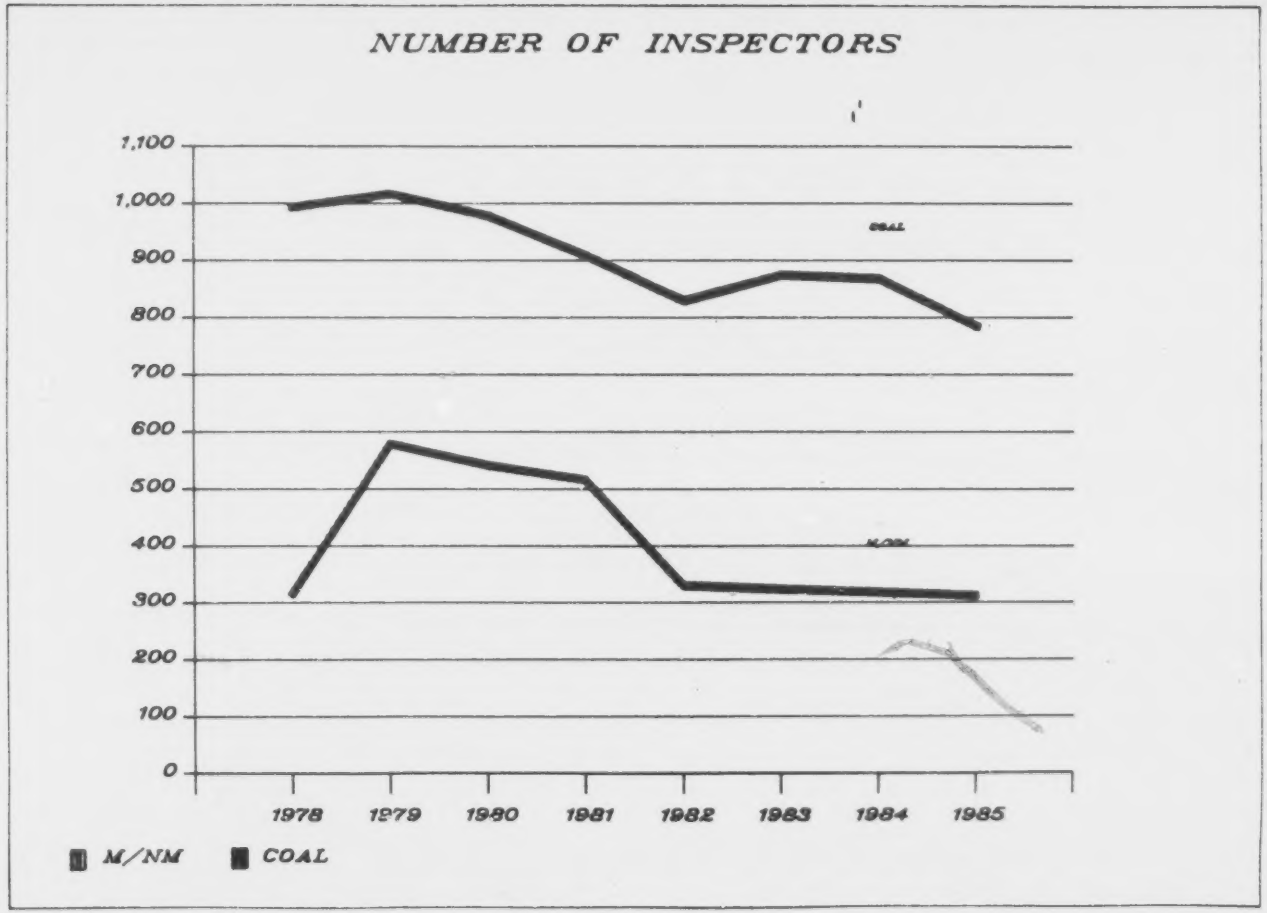
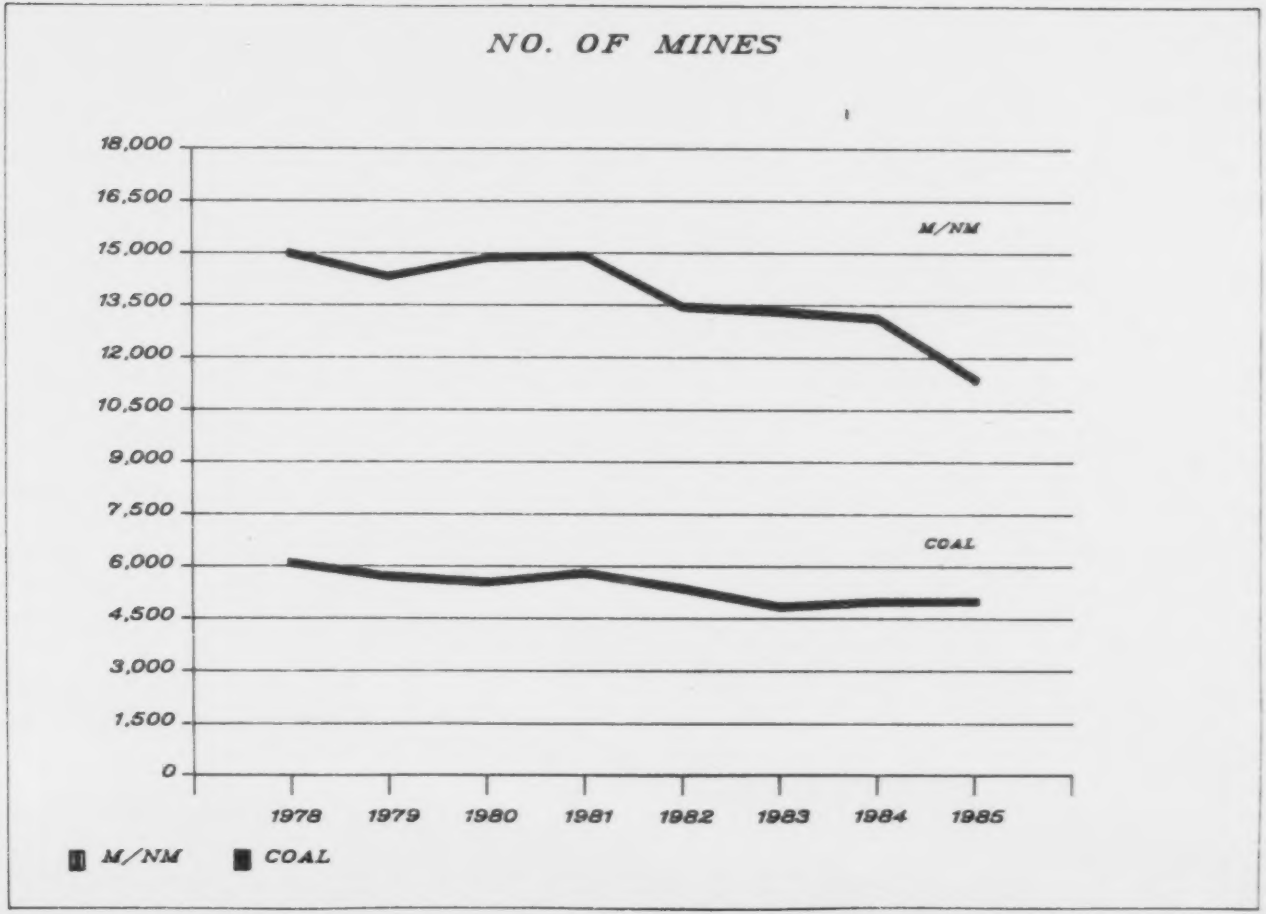
1979
1980
1981
1982
1983
1984
1985
M/NM
COAL


NUMBER OF INSPECTORS
1,100
1,000
900
800
700
600
500
400
300
200
100
0
1978
1979
1980
1981
1982
1983
1984
1985
M/NM
COAL


NO. OF MINES
18,000
16,500
15,000
13,500
12,000
10,500
9,000
7,500
6,000
4,500
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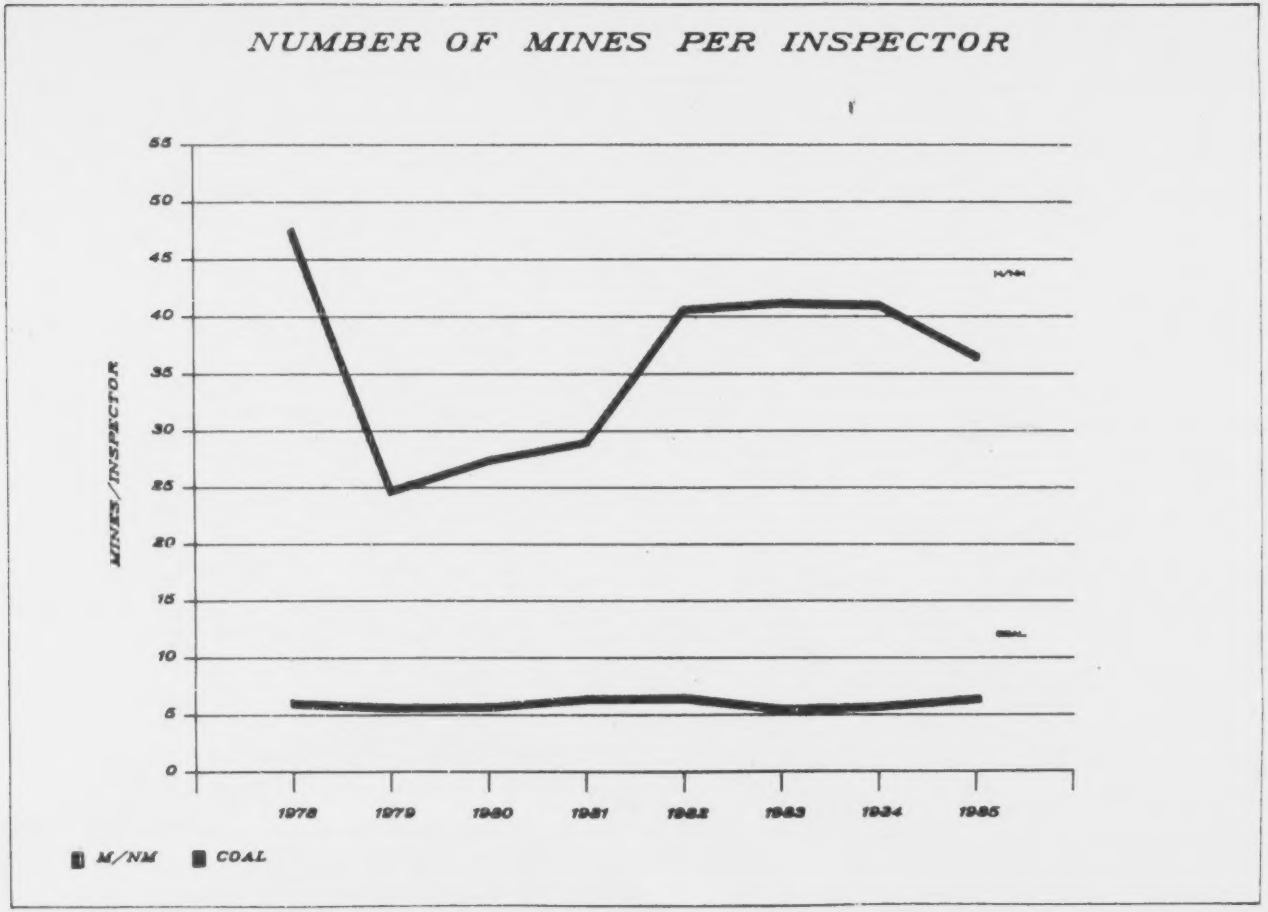
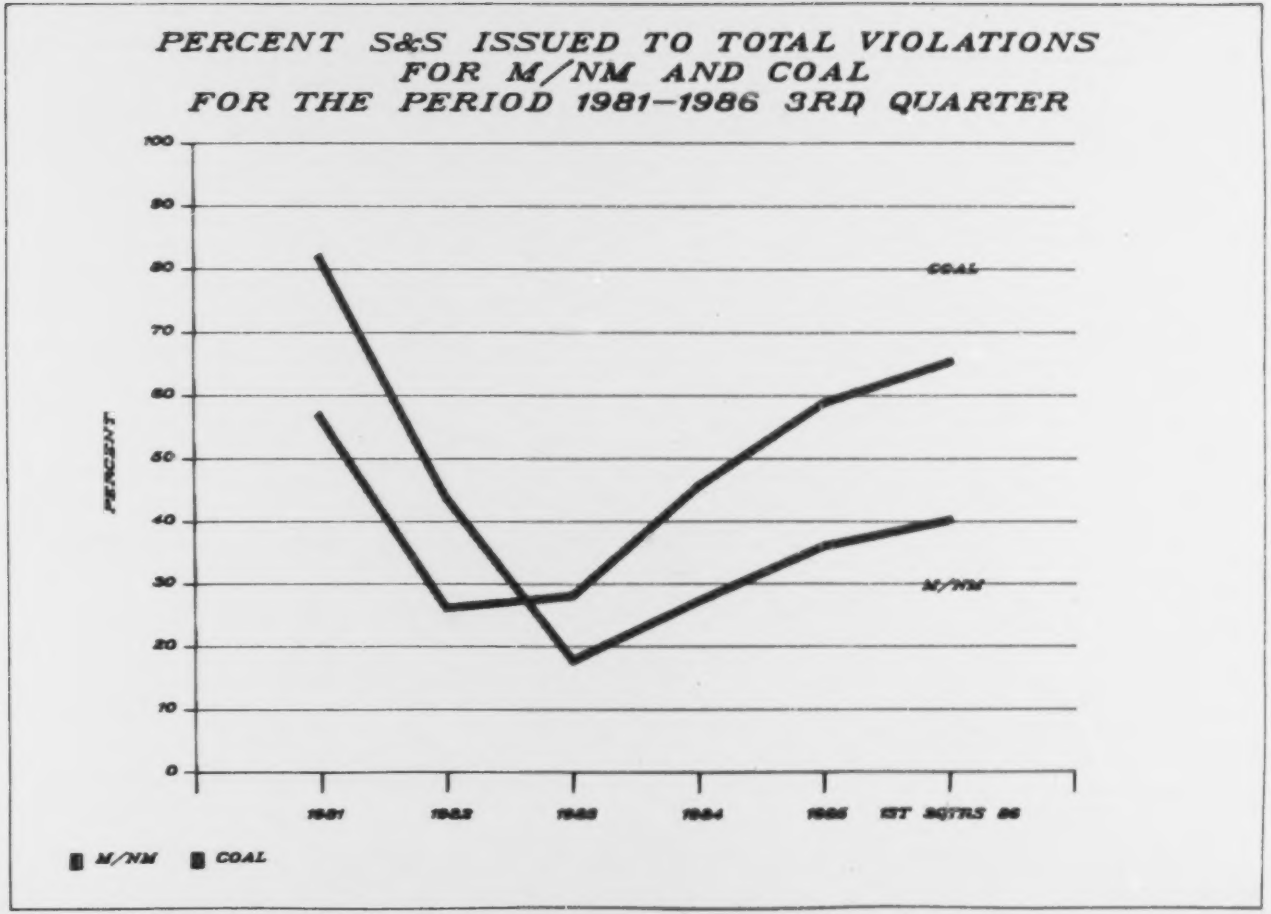
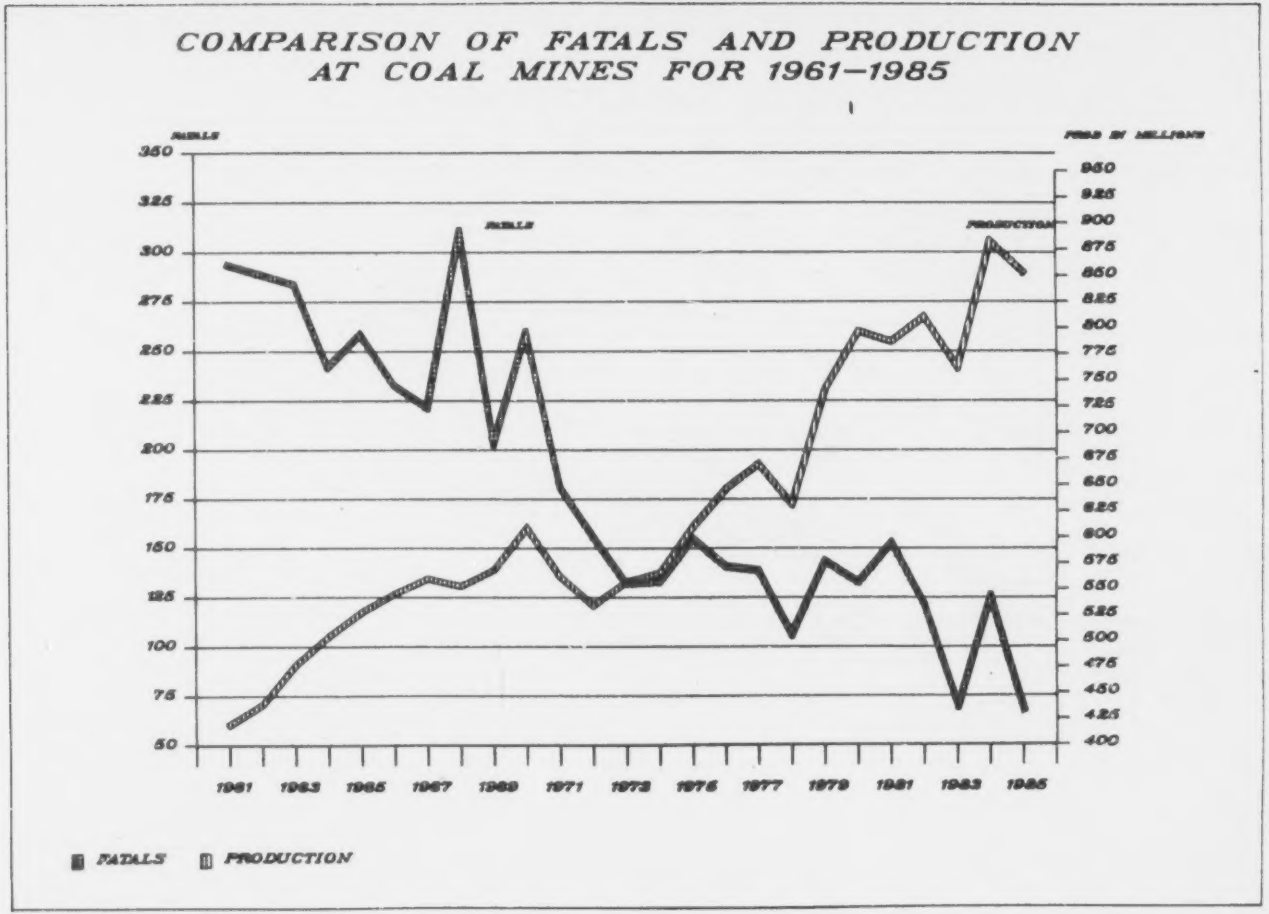
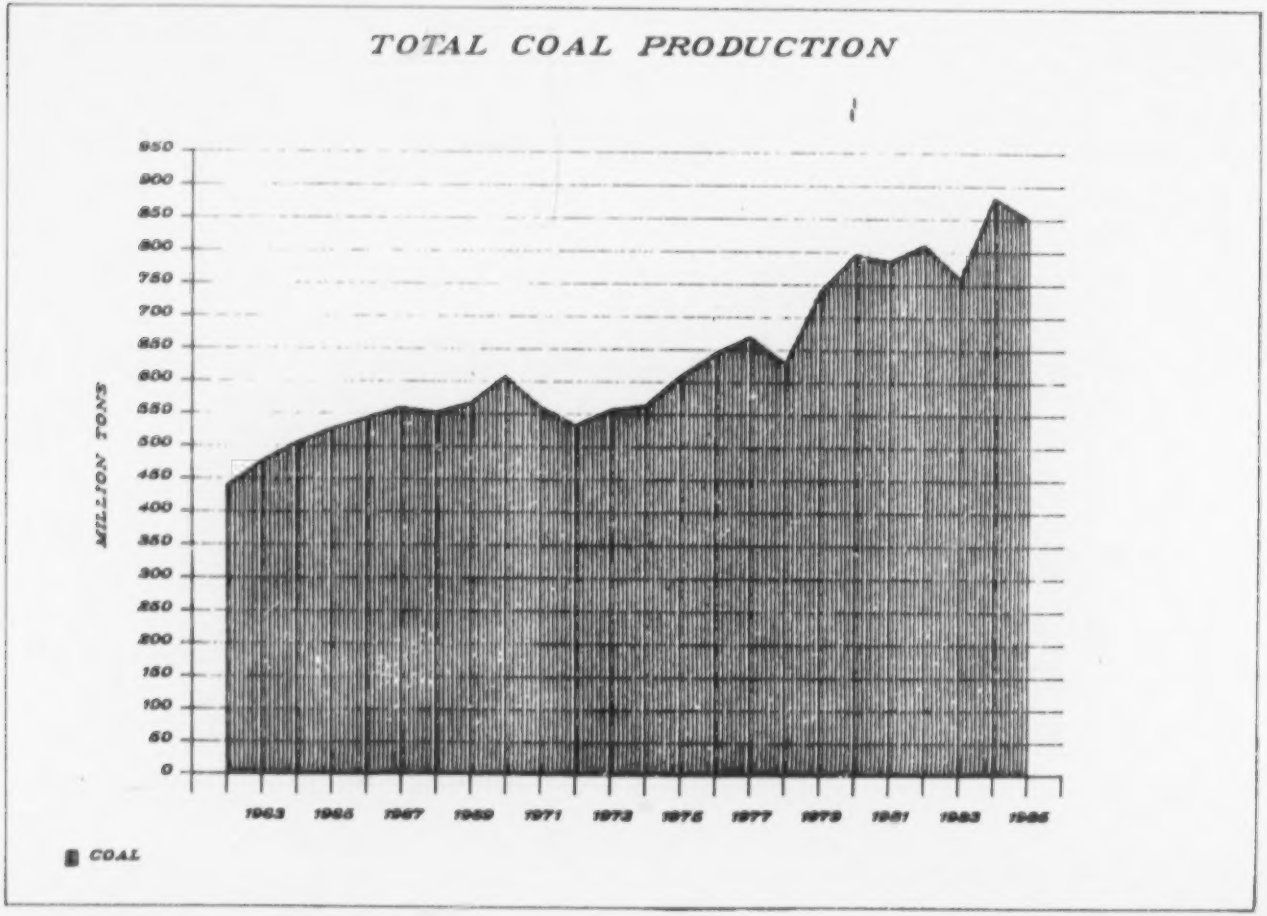
1,500
0
M/NM
COAL
1978
1979
1980
1981
1982
1983
1984
1985
M/NM
COAL


NUMBER OF MINES PER INSPECTOR
MINES/INSPECTOR
55
50
45
40
35
30
25
20
15
10
5
0
1978
1979
1980
1981
1982
1983
1984
1985
M/NM
COAL


PERCENT S&S ISSUED TO TOTAL VIOLATIONS
FOR M/NM AND COAL
FOR THE PERIOD 1981–1986 3RD QUARTER
PERCENT
100
90
80
70
60
50
40
30
20
10
0
COAL
M/NM
1981
1982
1983
1984
1985
1ST QTRS 86
M/NM
COAL


COMPARISON OF FATALS AND PRODUCTION
AT COAL MINES FOR 1961–1985
FATALS
PRODUCTION
FATALS
PRODUCTION
350
325
300
275
250
225
200
175
150
125
100
75
50
960
925
900
875
850
825
800
775
750
725
700
675
650
625
600
575
550
525
500
475
450
425
400
1961
1963
1965
1967
1969
1971
1973
1975
1977
1979
1981
1983
1985
FATALS
PRODUCTION


TOTAL COAL PRODUCTION
MILLION TONS
950
900
850
800
750
700
650
600
550
500
450
400
350
300
250
200
150
100
50
0
1963
1965
1967
1969
1971
1973
1975
1977
1979
1981
1983
1985
COAL

Senator KENNEDY. In any event, as I understand, you criticized the decision to indict the company. We can read through it, but I think we can accept that, any fair evaluation of the memo would conclude that.

Mr. ZEGEER. May I add to what you are saying, Senator, another point that I think should go into the record? During that time there was an inspector that was being investigated for extortion. I was not informed of it and I was confronted by the inspector. This was within 3 weeks and the inspector was arrested by the FBI. I wanted to know why I was not told about that. And we indicted another company in Virginia——

Senator KENNEDY. We will include it all, but I am trying to just target in, as I was trying to target in on those particular regulations—I am trying to target in on a particular process of procedure. It may become evident to you. I think it will quickly, but that is what I want to examine, both in fairness to you and in fairness to the mineworkers.

In this memorandum, when I said you criticized the decision to indict the company, I was referring to: "In view of the above discussion, I hope that you are formalizing review procedures for possible criminal sanctions which will preclude situations like this in the future."

Mr. ZEGEER. That is right.

Senator KENNEDY. OK

Mr. ZEGEER. And it worked.

Senator KENNEDY. I am sure it did. I will get into that.

Mr. ZEGEER. So far this year we have had seven indictments——

Senator KENNEDY. Let me get some answers here. I do not want to cut you off, but I want to get responsive answers to the questions. When I ask a question about you criticizing the decision to indict, the answer is yes. That is——

Mr. ZEGEER. Would you want to know more?

Senator KENNEDY. We just heard your answer. I am glad to stay here as long as you would like to, but I want to get into a particular issue and then you can talk as long as you like, but I want to cover this ground.

Mr. ZEGEER. Can we come back to this subject?

Senator KENNEDY. Sure.

Mr. ZEGEER. OK.

Senator KENNEDY. Now, in your memorandum did you direct Mr. Lamonica to set up a review process for possible criminal prosecutions that "will preclude the situations like this in the future"?

Mr Zegeer. We set up, he and——

Senator KENNEDY. Did you or did you not?

Mr. ZEGEER. Not the way you worded it.

Senator KENNEDY. Well, you can give your answer and I will read what you put in here and let the record stand for itself. You said in the memo: "In view of the above, I hope that you will formalize review procedures for possible criminal actions which will preclude situations like this in the future" and your answer?

Mr. ZEGEER. My answer is I have done a lot of that type of work, putting in steel arches in heavy fall areas, which at best is very dangerous work. In this case, in reviewing, the summary, the foreman was killed when a piece of rock fell between two arches and

fell on him, and eight officials of the company were indicted. I want our people to go through a thought process before they even serve a citation on a company, indict a company for willful misconduct or whatever, I want them to go through a thorough thought process.

I have received from him and the administrator for metal the procedure that they are following as a result of that letter. It is working. This year we have had six or seven indictments that have passed through my office. I am kept apprised as to what is going on. I endorse what they are doing and we are communicating better.

The same thing holds true on citations or inspections at mines. Each year, we have about 130,000 citations and we get a lot of complaints from different sources over the heaviness on our citations, the percent of S&S increase, the heavyhandedness. All we want is for our people to go through the thought process.

We are setting up some schools in different field offices for our inspectors themselves to go through this process of discussing cases, to afford them a better chance to view a situation and make a judgment call that is fair and proper. We want our inspectors to be firm but fair in what they are doing, and if they could be friendly, that is fine. But we have a lot of criticism over the heavy-handedness, and I want our people to go through a thought process that will allow us to comply with the Mine Act, the spirit of the Mine Act.

Senator KENNEDY. Then, if we can get back to our earlier question and response, after this Mr. Lamonica and Mr. Bernard reported back to you in their memo of March 11 that they had set up a review process, and I would ask that that be made a part of the record.

Senator SIMON. That will be inserted in the record.

[The document referred to follows:]

U. S. Department of Labor

Mine Safety and Health Administration
4015 Wilson Boulevard
Arlington, Virginia 22203

MAR 1 1 1986

3-15-86

MEMORANDUM FOR DAVID A. ZEGEER

FROM: JOSEPH A. LAMONICA
Administrator
for Coal Mine Safety and Health

ROY L. BERNARD
Administrator for
Metal and Nonmetal Mine Safety and Health

SUBJECT: Procedures for Referrals to the Department of Justice

In response to your memorandum of December 19, 1985, we are implementing the following procedures to refer possible criminal violations of the Mine Act to the Department of Justice or United States Attorneys:

1. Once a preliminary review of the case indicates that the technical elements necessary to establish a possible criminal violation of the Mine Act are present, the matter will be evaluated to determine if there are mitigating circumstances present which do not make the situation appropriate for prosecution.

2. This evaluation will involve insuring that the factors listed below were fully considered at the field level. In addition, an independent review of these factors will be made by the Headquarters staff. The factors to be considered are:

   a) Are the accident and injury rates at the mine worse than those at other similar operations?

   b) Does the enforcement history at the mine indicate that the operation has been subject to other sanctions such as 104(d) orders or 104(b) orders on a recurring basis?

   c) Is this a situation where a good faith dispute existed between MSHA and the operator over the proper method of dealing with a particular condition or practice?

   d) Do the anticipated positive benefits of a criminal prosecution in this case outweigh any possible negative factors which could affect health and safety efforts?

3. Following this review, the case will be referred to the Office of the Solicitor for an independent review for legal sufficiency.

4. If these reviews result in a tentative determination that the case warrants referral to the Department of Justice, the matter will be forwarded to the Office of the Administrator to determine if there are other mitigating circumstances that should be considered prior to forwarding the case to the Assistant Secretary. A briefing will then be scheduled with the Assistant Secretary which will include a discussion of all factors considered, including the advantages and disadvantages of proceeding with a referral of the case to the Department of Justice.

Senator KENNEDY. That system, as reflected in the memo, requires a field office review of possible mitigating circumstances, a review by the Solicitor's office, a review by the Administrator, and finally a briefing of you to discuss the pros and the cons. Also currently you are in the process of dissolving the authority of the National Office of Technical Compliance and Investigations over special investigations.

Mr. ZEGEER. I am in the process of dissolving what? I did not follow that?

Senator KENNEDY. The authority of the National Office of Technical Compliance and Investigations over special investigations, are you not? Are you not doing that?

Mr. ZEGEER. [No response.]

Senator KENNEDY. I will include this in the record. This is a draft from Jerry Spicer to David Zegeer, which talks about the transfer of authority. In addition, it is requested "to redelegate to the Coal Mine Safety and Health district managers the authority to evaluate, review and make recommendations to the Department of Labor's Office of the Solicitor relating to sections 110 civil and criminal investigations."

Instead of having the special authority which was set up to review these kinds of safety hazards, it is now being delegated and sent on back to the local jurisdictions. I would think any fair review of the record would find that to be so and as a direct result of this whole review of investigation. The draft of the memo which I made a part of the record was written for your approval which would delegate that authority to the district managers effective October 1. Has that memo been sent?

Mr. ZEGEER. I really do not know. No; it has not.

Senator KENNEDY. Was the investigation of the Peabody Coal Co. which led to its indictment conducted by the special investigation of MSHA?

Mr. ZEGEER. Yes, sir; as far as I know. I had no part in that.

Senator KENNEDY. Well, if it was conducted, and they got indictments and then we have your statement here, "I hope that your formalizing criminal actions will preclude situations like this in the future," then effectively you dissolved the central authority and sent it back to the local districts. That seems to me to be a way of stripping an effective enforcement agency established under MSHA to deal with these kinds of hazards, and you have effectively taken the teeth out of the investigative unit. I do not see how you can reach any other conclusions than that.

Mr. ZEGEER. Senator, we are in the process of reorganizing not only metal/nonmetal, but coal, and that is part of the process, the reorganizing of coal and metal/nonmetal.

Senator KENNEDY. Well, was not the Office of Technical Compliance and Investigations set up originally to assure stronger enforcement of the Mine Safety and Health Act?

Mr. ZEGEER. That is true.

Senator KENNEDY. All right. And do you not think all these actions will make it unlikely that there will be many future criminal actions taken against the mining companies?

Mr. ZEGEER. I do not see where it would have any bearing on it.

Senator KENNEDY. Well, you have got a situation where they brought an investigation and indictment, you indicate you do not like that kind of thing, and the next thing you go and you strip the authority of it.

Mr. ZEGEER. Senator——

Senator KENNEDY. Those are the facts. I have just read the memorandums. You know, maybe it is just going to leave it up to others, whether they draw that same conclusion as I have drawn. I have drawn that and I do not think it is unreasonable to draw that conclusion.

Mr. ZEGEER. May I make a comment on that issue?

Senator KENNEDY. Yes; you may.

Mr. ZEGEER. In your reference to mitigating circumstance, in the State of Virginia a foreman was discharged because a man was killed. The State was going to revoke the man's papers and the company fired him and we were going after him with criminal intent. It came out later that the foreman was completely innocent. The man was reinstated, given backpay, and he did not have his papers revoked. A mistake was about to be made.

I would take you back to 1950 where there were three people killed in a mine accident, three foremen were fired. One foreman was completely innocent. He was not even working on that shift. He was a scapegoat. A year later the truth came out, the man died of a broken heart.

When you in this work of mine health and safety indict somebody for a felony and call him a murderer, it is pretty heavy duty, and all I want is for our people to go through the thought process of being sure of what they are doing before they make a judgment call. That is my concern, so that this organization will have credibility. I want them to be professional, I want them to be respected by all segments in the mining community, and this is what I want to see our people doing.

So, if and when we indict somebody—and there have been seven this year—I want us all to be sure what we are doing and I want to know about it, given I am responsible for this agency.

Senator KENNEDY. The point I think that we ought to understand is the indictment is by the U.S. attorneys. They are by the U.S. attorneys, who are considered by the Judiciary Committee. Some are better than others, Lord only knows.

But to suggest that the U.S. attorneys are out there trying to get some individual or not to be fair-minded is a broad indictment of those individuals I do not think is warranted or justified. Certainly, they make some mistakes, Lord only knows, and any time they do it is a travesty in terms of the judicial system.

Mr. ZEGEER. They get involved when we turn the case over to them.

Senator KENNEDY. To take this away from a process and a procedure that was established to provide additional kinds of safety and the indictments by U.S. attorneys that have by training and by tradition and by experience—are individuals who are experts in the questions of culpability. They have to be, they should be, and now we are circumventing their particular function and issuing at least some guidelines to take in all kinds of mitigating facts that are going to be decided by others.

As I understand, the company itself pleaded guilty in this case. Now, just to finish up what we are talking about—we were talking about the question of roof safety, and as I understand, on chart No. 2 there is a particular recommendation that was made again by the experts, and it is also my understanding that if those recommendations made under recommendation 6 by the experts, were adopted this tragic circumstance would not have happened. I do not know whether you want to make any comment on that. I am not one who thinks that—there are always Monday morning quarterbacks, and I would agree with that. I am not trying to make a big fact on it, but I do think that it does point out that the importance and the significance of these recommendations in terms of the experts' suggestions, and they should not be lightly dismissed. Here is an important example where they have.

Let me get to one other area and ask you about, and that is on the health standards. As I understand, MSHA has not promulgated any new health standards since its inception in 1977. The only proposed health standard now in the process is one to control the exposure of miners to radon. Current levels of exposure, according to NIOSH, put the miners at substantial risk of contracting lung cancer. MSHA has only moved to propose this new regulation because the Public Citizens Litigation Group petitioned the court to force it to do so in 1980 when MSHA resisted, and it has been dragging on it ever since. MSHA was supposed to file a proposed rule in July and still has not done so. Can you tell us where that particular regulation is; and, second, can you tell us what else you are doing, if anything, in promulgating new health standards?

Mr. ZEGEER. Senator, in 1980 I was not here. Pat, will you address that question?

Ms. SILVEY. I do not think he wants to hear from me.

Senator KENNEDY. Were you there in 1980?

Ms. SILVEY. I said I do not think you want to hear from me. Anyway, I was here in 1980, yes, sir. By the way, let me correct something for the record, two things.

Senator KENNEDY. OK. Good.

Ms. SILVEY. That is, we have indeed since the 1977 act published some health standards in the coal area. We published revisions to the coal dust standards, both the underground standards, the surface coal standards and the standards dealing with miners who are to be transferred because of evidence of pneumoconiosis.

Now, particularly to the radon daughter standards, you——

Senator KENNEDY. Will you just submit those as part of the record?

Ms. SILVEY. Yes, sir.

Senator KENNEDY. Thank you.

Ms. SILVEY. As to the radon, you mean?

Senator KENNEDY. The other ones that you referenced, just submit them later on.

Ms. SILVEY. Yes.

Senator KENNEDY. Thank you. Continue now, if you would.

Ms. SILVEY. As to the radon daughter standards, you are correct that the agency was petitioned by the Health Research Group and the Oil, Chemical, and Atomic Workers to lower the existing limits for radon daughter. We issued a preproposal draft, as you stated.

We were supposed to issue the proposed rule in July. Our latest schedule, the schedule that I have right now that we are working on, we anticipate issuing the proposed rule before the end of this year.

Now, in my making that statement to you, obviously we would be admitting that we have had some slippage in issuing the proposal, but we are reviewing. There is a divergence of opinion on that matter, on the issue of cancer and the levels of exposure to radon daughters, so we are looking at all of the epidemiological data, the different studies, NIOSH included, as you stated, and unfortunately we have slipped a little in the schedule but we do plan to do it before the end of this year, the proposed rule.

Senator KENNEDY. Before the end of the year?

Ms. SILVEY. Yes, sir. And not to preempt you, but since I am talking I would just like to make one more point.

Senator KENNEDY. Anything you like.

Ms. SILVEY. I would like to show that——

Senator KENNEDY. We have an open hearing, up to a point.

Ms. SILVEY. We have got to get a little levity here.

Senator KENNEDY. That is right.

Ms. SILVEY. That is that you referred a lot to the expert recommendations and I have had a lot of experience in MSHA rulemaking for a number of years now, and as you refer to the expert recommendations, from what you said to us it appears to me that you are talking about the committees that we formed at the outset back in 1982.

Senator KENNEDY. Yes.

Ms. SILVEY. Now, I must say that we formed these committees and they were technical program officials who were charged with giving the Assistant Secretary's office their best judgment about certain things. I know you must know that when you get to any kind of matter, be it technical, legal, whatever, that you are going to have issues on which people disagree. Therefore, when you say expert on some of those provisions, then I will say if we think of them in the literal sense of what an expert is and what an expert recommendation or an expert decision is to be, what is the point of the rulemaking process?

So the point is that some of those very provisions that are on that left-hand column facing me and that are labeled expert, they recommended some, I am sure, very good faith, some of our program officials' best judgment, but then, as I said to you earlier—and I know you said you did not want to hear about the process, but the fact of the matter is the process is real and we had a process to go through, and the rulemaking process is a process that allows these varying expert opinions to get out there and allows us to make a decision based on them.

[The biographical sketch of Ms. Silvery follows:]

BIOGRAPHICAL SKETCH
OF
PATRICIA WABBINGTON SILVEY

Patricia W. Silvey began her government career in 1970 as a manpower development specialist in the Labor Department's Manpower Administration. Her responsibilities included the development of regulations to implement the Work Incentive Program. In 1972, she was selected to participate in the Department's Management Intern Program, a one year program composed of diverse assignments. In that program, she worked on budget allocations, in the Solicitor's Office, and on the Senate Subcommittee for Children and Youth. Mrs. Silvey became a departmental budget analyst in 1973 and, in that position, was responsible for all fiscal and budget activities for the OSHA and Deparmental management accounts. In 1977, she became a member of the DOL transition team to assist in the transfer of the Mining Enforcement and Safety Administration (now MSHA) from the Interior Department to the Department of Labor and the implementation of the Federal Mine Safety and Health Act of 1977.

Mrs. Silvey stayed at MSHA and early in 1978, she played an integral role in the establishment of MSHA's Office of Standards, Regulations and Variances, holding various assignments of increasing managerial responsibility. In July 1983, Mrs. Silvey was appointed Director of the office. In that capacity, she is responsible for managing, directing and coordinating the development and promulgation of all MSHA regulations, and is the principal advisor to the Assistant Secretary and the Department on regulatory policy affecting mine safety and health matters.

Mrs. Silvey earned her B.S. degree from Tuskegee Institute in 1967, M.A. from the University of Alabama in 1969, and J.D. degree from Georgetown University Law Center in 1978. She is a member of the District of Columbia bar.

Mrs. Silvey's civic activities have included serving as president of a local PTA and volunteer work with a local boys and girls club. She also provides pro bono legal services to her Church and its members. Mrs. Silvey is married and has two children.

Senator KENNEDY. Well, as I mentioned, we will ask for whatever else you would like to state about those and include that as part of the record. I want to thank this panel very much for your presence here today. If we have other questions, we will submit them and make them a part of the record.

We have one further panel here. Would Mr. Jackson, Mr. Ryan, and Mr. Main come together. Come up and we will have Mr. Jackson and Mr. Ryan here, and Mr. Main, if they would be kind enough to come up. We are running into an extremely difficult set of circumstances here because we have to be at other places. We are in the process now of final moments before the Senate considers the drug legislation and, as you can imagine, our committee is dealing with the features on education, training, and other community activities, so we are all very much involved in that.

What I would like to do, if you would, submit your statements in entirety for the record. We have some questions which some of the members had intended to ask and I would like to ask—and I apologize for this process and procedure—if we would have particular members of the staff, I have some particular questions, I would like to have them asked and have them somewhat elaborated on and I would like to ask if we could proceed that way because both myself and Senator Simon and Senator Metzenbaum have some questions. I think it is important that we get some kind of exchange here. So I will ask counsel if they would be good enough at this time to identify the Senators they are representing and we will have the submission. If there is anything else which I would hope, given the previous panel, that you would like to make a comment on, that you do it here. I think it is important for the record.

So we will submit—on some of the things we talked of earlier, I submitted some of those questions and I would like to have each make—we will go down the list and that will be a part of the record, and then I will ask counsel if he would inquire of witnesses in the areas in which the Senators had the questions.

Thank you very much.

STATEMENTS OF JOE MAIN, ADMINISTRATOR, DEPARTMENT OF OCCUPATIONAL HEALTH AND SAFETY, UNITED MINE WORKERS OF AMERICA; PATRICK M. RYAN, DIRECTOR FOR LOSS PREVENTION AND ADMINISTRATION, AMAX COAL CO.; ACCOMPANIED BY BOBBY J. JACKSON, DIRECTOR OF SAFETY, ASARCO, INC.

Mr. MAIN. Thank you very much. I appreciate the opportunity to be here today and I am going to be very brief because I have a plane to catch, unfortunately. We are getting ready to close up the investigation on the Wilberg tragedy and we have a hearing on that at 10 o'clock tomorrow morning, so I am going to have to be very brief and depart very quickly.

The first thing I would like to say is that in our submitted testimony there is a request made for additional oversight hearings on the agency. As noted in those comments, there are other very troubled things within the realm of mine enforcement as carried out by the Mine Safety and Health Administration that go much wider and deeper than the issues which the GAO addressed here today.

I think what has happened is a beginning of the peeling back of the onionskin to expose some of the major problems that exist within the agency. I am going to be somewhat brief but touch upon some of the things that we believe cause the interest to be here or should be here for the conducting of such additional hearings.

First off, I would like to address the chart on the wall. I was very interested in seeing those. As a matter of fact, I had a FOIA request for that same type of information into the agency for some weeks now, with no response. I understand now that there is something they apparently are going to respond to whenever they do decide to answer my letter.

By the same token, what apparently came out this morning is what I have been advised of, and that is the workings of technical and professional inspectors within the agency to develop these regulations was being altered on the top level. That gave rise to the request that we made to the agency for any of those records that had been submitted to the Secretary or the Assistant Secretary's office—for us to make an analysis of, to determine just exactly what changes had been made.

In regard to the regulatory progress, we had become very concerned with the direction of the agency in terms of not only weakening mine health and safety standards that we now have today; additionally ignoring the historical data that has been developed on accidents, injuries, and deaths that occurred in the industry.

We believe that the agency has taken a misguided approach in terms of developing those regulations—pure operator interest as opposed to looking at the historical data, and I will give you some examples of the things that are not on the board that we have viewed. In some of the proposals and we have seen which we have submitted comments on are the following:

VENTILATION

MSHA issued a preproposal, what they consider a preproposal or a proposed regulation on changing the ventilation standards. Contained in one of those changes was a requirement that would have allowed every coal company in this country to use a two-entry system. Now, many of you may not really understand what I am talking about. The two-entry system is the same type of system that was used at the Wilberg mine which led to the death of 27 miners.

We have criticized the agency for approving that plan with which led to the death of 27 miners. We have criticized the agency for continuing to approve those plans, even though they changed their system which we questioned the legality of it——

Mr. BLAKEY. Mr. Main, may I interrupt you just for a second. I think it would be appropriate, given the understanding under which we have embarked on the hearing, that we avoid references to that Wilberg incident because it is a pending matter.

Mr. MAIN. OK. In terms of—I agree and understand the focus of the hearing today and that is for a hearing for another day, but I think it is important to just touch on that for a brief second to understand what this all leads to. As I said, the agency took a position to approve those types of plans and actions, and then wound

up addressing it in a preproposal, after the event had occurred, which will allow every coal company in the Nation to have that type of system, to use that type of system.

They proposed other massive changes in the ventilation regulations that would have altered severely the current requirements that mine operators now are required to employ—eliminate gas checks every 20 minutes, allowing increases of methane in certain situations, providing for elimination of bleeder systems in certain mines that are now required, elimination of the review process of ventilation plans that are required to be done every 6 months, and various other changes.

THE ROOF CONTROL PLANS

One of the things that was mentioned this morning that there may be some confusion over is the type of plans provided for or approved, rather, by MSHA for small mines. There was a discussion on conventional support systems. The issue really comes down to this: The agency is currently approving roof control plans at small coal mines as well as some larger coal mines that does not provide for full overhead support protection to the miners. They are allowing them to use posts instead of what is commonly used in this country—full overhead roof bolts. They are allowed to use posts, requiring the miners, because of the way the machine moves in the mining place, to knock the post out which eliminates the protection over the miner. Additionally, these mines are approved to mine excessively wide widths, not the normal 20 feet in a majority of cases, but up to 30 feet, which increases the pressure on the mine roof and further exposes the miner.

Now, the equipment operator who is running this machine in there is not protected like the equipment operator in a larger mine. He has no protective cab over his head to keep him from being crushed or hurt from the roof falls.

We had recommended that the agency take a look at the statistics, and the accident history which clearly shows that there is a need for increased protection. The regulations as proposed fail to address it and in our opinion allows to continue on the existence of those plans.

Coal mine fatalities last year in the State of West Virginia—one at Newport Mining and one at another mine close by—were the result of accidents where those inferior plans were approved, and were not changed until after the fatalities occurred.

I am not going to spend a lot of time on the regulations. I know we are short of time here today. But I just want to make the point that the UMWA is very concerned about the direction of those regulations. We believe that the regulations are being changed to accommodate operator interest as opposed to looking at the historical accident data that is in the record that the agency has at its access. We believe that they have ignored that in the development of these regulations.

The small mines problem addressed here today is one of the most critical problems we have in the industry. It is one of the most deadly areas of the coal industry for a coal miner to work. Last year, 75 percent of the coal miners killed in this country were

killed at mines employing 50 or less miners. Half of the coal miners in this country were killed at mines employing 20 or less miners. That small group only represents somewhere around 10 percent of the industry. I think that is a telling enough problem in itself.

In addition to that, there has been government studies that have been conducted that said basically the same thing. An Academy of Science study on underground coal mining found that accident rates at the small mines was two to three times higher than the national average.

A second study commissioned after the first findings found that mines of the small category of 20 or less, the fatal accident rates are twice those of the large mines with 21 to 50. The Assistant Secretary served on that this committee. And if anybody is aware of the problem in the agency, it has to be him.

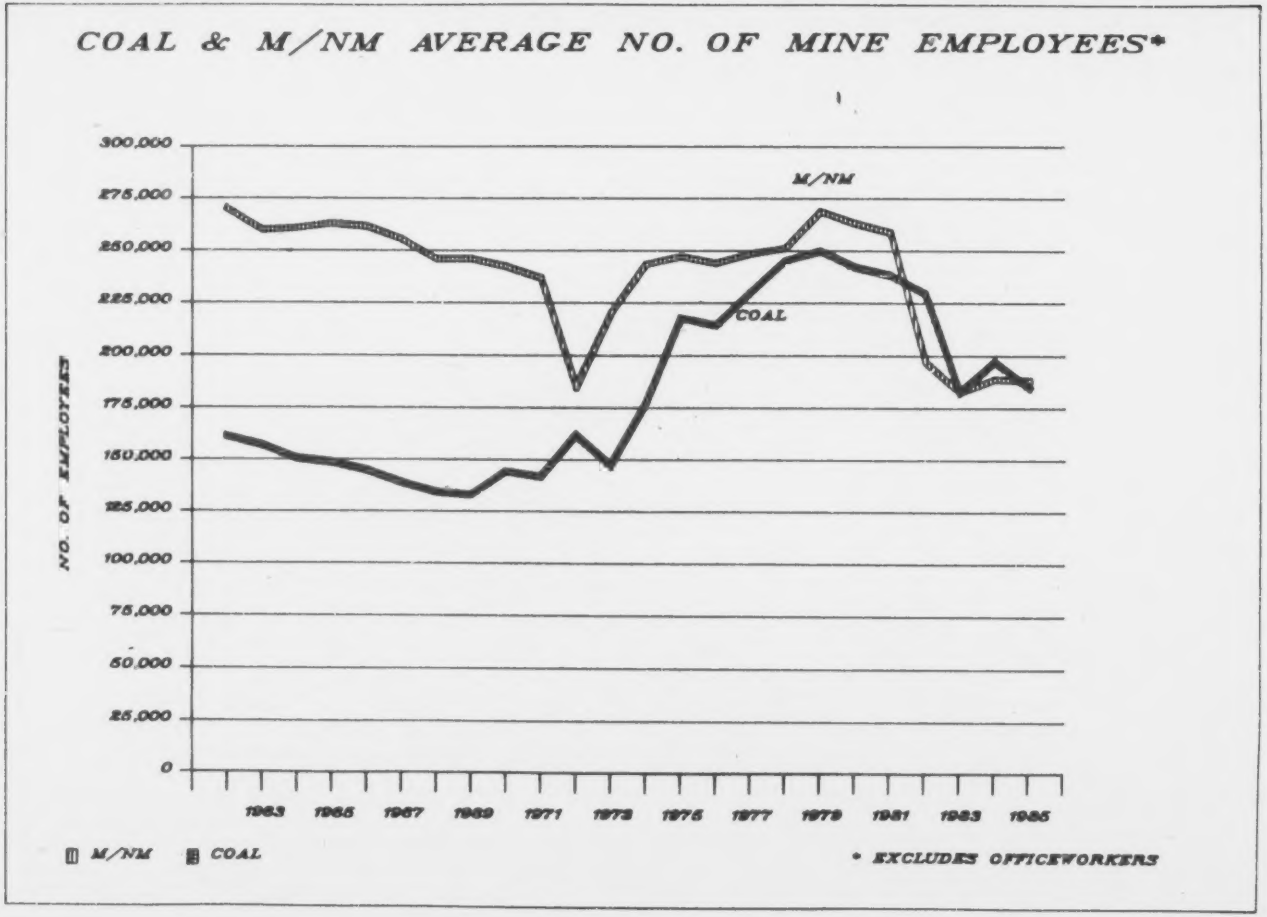
There was a recent report published by the agency on the underground coal mines fatalities in 1985, describing the types of accidents. That report showed that coal miners are being killed at those small mines everyway a coal miner can be killed. But do you know what was so amazing about that report? There is one conclusion drawn as far as the focus of what the agency needed to look at to remedy the problem—the training of the miners.

Now, we believe that the training of the miner is essential, but when you have mine operators like R&R Coal Company, which had one of the accidents cited in that report, one finds they made virtually no effort to protect their miners—It was one of the most deplorable situations. How is a miner going to protect himself if the operator does not provide the protections to do that? The simple answer is he cannot.

And what we are finding in the depressed areas, with the economy the way it is in the Appalchian coal fields where these coal mines exist, there is a lot of unemployment. The miners are concerned about their jobs. The miners are so concerned, as the case pointed out in 1984 in the Bon Trucking disaster, they were afraid to even talk about the conditions they were exposed to.

These are some of the problems in the coal field that the agency is not taking action on. As a matter of fact, at the meetings that were spoke of by MSHA today—when they rushed down to southern West Virginia and Virginia to address this problem, they went down to meet with the coal operators to talk about the problems. There was a press statement issued on the Beckley, WV meeting, and the press article basically said that the Administrator of the agency said if public pressure increases we are going to have to do something about this problem. That is basically the outline of the message that was delivered.

At the tail end of the conference as reported by the article, they asked for a new era of cooperation. We sent a letter to the agency complaining about that type of response when the responses needed was to approve plans that are going to protect miners, to get more inspectors out there and enforce the law, to take tougher action when they get down there to avoid those Bon Truck fatalities and those R&R mining deaths, and to promulgate the regulations necessary to protect them as opposed to ignore what has been happening over the last several years and let it continue. That is


COAL & M/NM AVERAGE NO. OF MINE EMPLOYEES*
NO. OF EMPLOYEES
300,000
275,000
250,000
225,000
200,000
175,000
150,000
125,000
100,000
75,000
50,000
25,000
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M/NM
COAL
1963
1965
1967
1969
1971
1973
1975
1977
1979
1981
1983
1985
M/NM
COAL
* EXCLUDES OFFICEWORKERS

exactly what the case comes down to and that is the way that the facts of the case clearly represent MSHA on the issue.

There is another issue—I am going to end up very quickly because I do have to catch a flight, and I apologize for that—the remaining issue I would like to talk about is the MSHA district 9 problems. Plans have been approved in that particular area that I think bears a scrutiny of folks well beyond the agency who have in our opinion not adequately addressed the problem of bringing that situation under control.

The plans that have been approved out there have been implicated in different mining deaths that question the agency's responsibility. The reorganization of the agency I think is a clear question that needs a lot of scrutiny as far as the top level of this agency dumping down to the lower levels their responsibilities so that they will be so diluted that nobody has any real responsibility any more. We are concerned about that.

We are also concerned about the attitude and the actions and the way that the agency carries out its mission. In terms of our written testimony, I would like for that to be made a matter of the record. There are some very important things in there.

I again close by thanking you very much for the opportunity to be here today and I would also request again that there be full oversight hearings held to peel away the onionskin and get down to the basics of business of what is going on in this agency.

I thank you very much.

[The prepared statement of Mr. Main follows:]

TESTIMONY OF JOE MAIN, ADMINISTRATOR
DEPARTMENT OF OCCUPATIONAL HEALTH AND SAFETY
UNITED MINE WORKERS OF AMERICA

BEFORE THE
UNITED STATES SENATE
COMMITTEE ON LABOR AND HUMAN RESOURCES

OVERSIGHT OF THE
MINE SAFETY AND HEALTH ADMINISTRATION

SEPTEMBER 25, 1986

Mr. Chairman and members of the Committee:

I am Joe Main, Administrator of the Department of Occupational Health and Safety of the United Mine Workers of America. I want to thank you for inviting me to testify today.

As you are aware, the United Mine Workers of America has a large number of complaints about the ways in which the Mine Safety and Health Administration fails to fulfill its congressional mandate to protect the nation's coal miners. Although the focus of this hearing is on the GAO Report on Accident Reporting and the quality of MSHA inspections, I will be briefly addressing other critical matters: such as MSHA's activity on revising the underground coal mine safety standards, health and safety problems with small coal mines, two-entry mining systems and the activities of MSHA District No. 9. This list of topics does not exhaust our concerns. There are many other equally important issues that we would raise at full oversight hearings we request to be scheduled at later dates.

Underreporting of Accidents

Last winter, during hearings scheduled to consider the confirmation of Ford B. Ford as Chairman of the Federal Mine Safety and Health Review Commission, Senator Metzenbaum raised concerns about underreporting of accidents.

His concerns stemmed from information that the UMWA had supplied, after the Union's attempts to get MSHA to resolve the problem had proved futile.

For the benefit of the rest of the members of this committee, I would like to briefly go over the history of events that led to the Union's approaching Senator Metzenbaum.

On October 2, 1984, the UMWA wrote Assistant Secretary of Labor David Zegeer, advising that we had found serious discrepancies in the Mine Safety and Health Administration's coal mining accident figures. We informed the Agency that we had reviewed the accident reporting of the largest underground coal mine in Ohio and found serious underreporting of lost-time accidents.

MSHA's records indicated that only 1,732 lost-time accidents occurred in the U.S. in the first quarter of 1984, with the North American Coal Company's Quarto No. 4 Mine reporting 11 such accidents. Our investigation,

however, disclosed that there were 78 lost-time accidents at the Quarto No. 4 Mine during that quarter. We believe that there was massive underreporting elsewhere and significantly higher injury rates than had been claimed.

In our letter to Mr. Zegeer we suggested that five Ohio mines (including three operated by North American Coal Company) be audited for 1982, 1983 and 1984. In order to assist MSHA, we forwarded a list of the specific accidents we uncovered at the Quarto No. 4 Mine.

Although we received no reply to our letter, on November 2, 1984, MSHA field investigators cited North American Coal for failure to report 410 accidents resulting in lost-time injuries to miners at the Quarto No. 4 Mine in 1982, 1983 and 1984.

Instead of strong enforcement to correct this serious misconduct, MSHA let the company off the hook. Only three citations (one for each year) were issued for the 410 violations. Moreover, those three citations were issued as non-significant and substantial (S.&S.) violations, which carry a maximum $20 fine. North American Coal Company, therefore, faced a penalty equivalent to the cost of a pair of work boots for the 410 unreported lost-time injuries.

On January 29, 1985, we again wrote Mr. Zegeer, noting

the results of the November field investigation. We again protested the Agency's weak monitoring and enforcement actions, and cited MSHA's attitude as the likely reason for underreporting by the industry. Though more than a year and a half has passed, we have not heard from Mr. Zegeer.

When the compulsory audit of the North American mines was completed, the company was cited for failure to report 624 lost-time accidents at three other mines in 1982, 1983 and 1984. Again, MSHA failed to take effective enforcement measures. Only one non-S.&S. citation was issued for each year at each of those mines. This certainly does nothing to assure the accurate reporting of accidents that is necessary to protect the well being of coal miners.

It was obvious that the Agency was not going to enforce the Mine Act effectively or respond to our complaints. It was only when members of Congress were apprised of the situation that MSHA began to pay attention to the problem.

Following Congressional inquiries MSHA responded by issuing an informational bulletin on January 2, 1986. That bulletin advised the industry that MSHA was going to take a tougher position in enforcing injury reporting requirements. Unfortunately, evidence seems to indicate that MSHA's bark was worse than its bite.

For example, In June 1986, after receiving a complaint from the UMWA's local union health and safety committee, MSHA investigated Consolidation Coal Company's Dilworth Mine. The investigation found three unreported injuries, two of which involved weeks of lost time. Again, the violations were only assessed at $20 each. A month later, a second complaint by the miners uncovered two more unreported injuries, one of which involved a miner who had been off for 15 days. Again, the assessment issued by MSHA was $20 each. Copies of these records are attached.

MSHA's handling of our complaints, as well as the meaningless slap on the wrist for both North American Coal and Consolidation Coal, is the height of irresponsibility. It also betrays the danger inherent in MSHA's "cooperative approach" with the coal operators.

Over the years, the coal industry has been notorious for its high death and injury rates. By its handling of this problem, MSHA effectively said to the coal industry: "We really don't care if you lie about your accidents." This attitude strikes fear in the hearts of all of us who seek to protect coal miners.

The Department of Labor took the opposite position recently in another industry, governed by a different Agency. On April 1, 1986, the Occupational Safety and Health Administration announced proposed penalties of $1,377,700

against Union Carbide for 221 health and safety violations. Included in those violations was the failure to record injuries and illnesses. That same day, Secretary of Labor Brock announced: "We are very serious about record keeping and will not tolerate improper reporting. Too many things depend on it -- individual company's ability to recognize and correct hazards; OSHA's ability to concentrate its resources in areas where the most dangers exist; and ultimately, the safety of workers themselves."

OSHA did not stop with its first action. On September 16, 1986, the Agency proposed $90,000 in additional penalties against Union Carbide for 355 unreported injuries at one plant. OSHA also announced that it had issued a $10,000 penalty for failing to report five injuries involving restricted work activity or lost days at another Union Carbide facility.

MSHA's policies are in direct contradiction to the position of Secretary Brock, and the actions of its sister Agency. It prefers cooperation with coal mine operators rather than enforcement of the law.

We believe that underreporting of injuries to miners is extensive. We further believe that the worst violators are small coal mines. Available data clearly show that the fatal accident rates at small coal mines are the highest in the industry. Fatalities are, obviously, more dif-

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ficult to cover up. According to government statistics, fatality rates at small mines are two to three times higher than those at larger mines. Last year, for example, small mines accounted for more than half of the total coal mining deaths, though they account for only a small portion of the employment.

We reviewed all of MSHA's available final reports on fatal accidents at mines that employed 50 or fewer workers for 1984, 1985 and 1986 (through September 9). Those reports include the mine's injury frequency rate for the last quarter. Of the more than 120 deaths in this category, 107 reports were available. Seventy reported no injuries and 17 reports noted that the information was not available, or for other reasons not included.

Of the 20 mining deaths in mines in which there showed injury incidence rates, all but one was over the national average, 13 were from mines whose incidence rates were more than twice as high as the national average and 7 were over three times as high.

We believe there is serious underreporting of accidents at small mines. This is consistent with the 1982 findings of the National Research Council, as reported in Toward Safer Underground Coal Mines. The few small mines that do report accidents reflect the actual state of the industry more accurately than MSHA's overall statistics. We find

it difficult to believe that small mines, which have double and triple the number of fatal accidents, have so few non-fatal injuries.

While I am on the subject of small mines, I would like to go into greater detail on the health and safety problem that exists in those operations.

Our serious concerns about conditions at small mines, are not only being raised today but have been raised repeatedly over the past few years. The exceptionally high death rate has been documented by us and, now, twice by the National Research Council. The newest of the studies is "Fatalities in Small Coal Mines." Though David Zegeer served on the committee that prepared that report, he has not used his position at MSHA to improve the situation at those mines: last year approximately 75 percent of coal mine fatalities occurred at mines employing 50 or fewer people.

The conditions that lead to this slaughter are indefensible. For example, three miners were killed by asphyxiation on August 15, 1986 at R. & R. Coal Company's No. 3 Mine in Whitley County, Kentucky. Following the accident, MSHA's investigation found that the company did not have equipment to ventilate the mine. The company was not conducting examinations of the mine for hazards or deadly gases. The roof conditions were described as an imminent

danger. The miners were not properly trained. The equipment was not being checked. The electrical systems were not maintained. That company had no intention of mining coal safely.

MSHA's recent report, "Fatalities in Small Underground Coal Mines" focused on mines that employed less than 20 miners for the year 1985. That report showed that these mines accounted for approximately 57 percent of 1985's underground fatalities -- but for only 8 percent of the total hours worked.

The reports contain abstracts of several of those fatal accidents. These show that miners are being killed by roof falls, are being crushed to death in belt feeders, are being electrocuted; are being crushed between mining equipment and the roof or rib, are being killed by explosives, are being killed by mine explosions, are being asphyxiated by noxious gases, and are being killed by falling objects and equipment.

Those abstracts show that coal miners are being killed at small mines in virtually every way it is possible for a coal miner to be killed.

It is obvious from reading the actual MSHA investigation reports on these fatal accidents that the small mine operators were not employing safe mining plans; were not

utilizing equipment that safely conformed to the seam heights; were not making proper examinations of the mine to detect the existing hazards; and were simply not complying with the mine laws. MSHA permitted all of this to happen.

Despite all this neglect, barely a harsh word is directed toward them. The report blindly singled out only one thing -- training of the miners. I believe training is a crucial part of mine health and safety but, in light of the obvious dangers created by operators' refusal to appropriate the money, personnel, time and other resources and protect the miner, this finding makes no sense. It clearly represents, however, the Agency's refusal to effectively deal with this major problem.

A review of MSHA's investigative reports discloses that mining plans are being used (and approved) at small mines that do not protect miners, that miners are subject to unsafe conditions, that inspections are too infrequent, and that MSHA is not effectively enforcing the mining laws. So far this year, over 30 coal miners have been killed on the job at small mines. Our complaints and recommendations have not effectively moved the Agency to take the necessary action to protect miners at small mines. Unless the Agency's attitude changes, the numbers will surely increase.

Fatality Review Committee

A problem related to the underreporting of mine accidents was described in a recent front-page story in the Washington Post, following up an investigation by the United Mine Workers' Journal. That problem stems from the actions of MSHA's little-known Fatality Review Committee, created in 1973 to decide whether certain fatalities should be considered "chargeable" or "nonchargeable" to the mining industry.

Determinations made by the committee are significant because they affect industry death statistics, compiled yearly as an index of mine safety. They also may affect the cost of liability insurance, providing an incentive for companies to pressure the committee to consider fatalities "nonchargeable".

Since its creation, the three-member committee has ruled on 881 fatalities considered "questionable" by MSHA district managers. In 86 percent of those cases, the committee, which includes no medical professional, has voted to erase them from the official record by ruling them "nonchargeable" to industry. The high percentage alone raises serious questions. The committee, despite its importance, is governed by no law or formal regulations, and does not take testimony, conduct hearings, or inspections in arriving at its decision.

A recent case in Virginia concerning the death of a 25-year old coal miner points to the need for closer scrutiny of this obscure but powerful committee. In September 1985, Bruce Ballard, a 25-year old miner in excellent health, was found lying dead beside the roof bolting machine he had operated that shift in Consolidation Coal Company's Buchanan No. 1 Mine in Buchanan County, Virginia.

Company officials asserted that he had died from a heart attack. A coroner's examination and an autopsy conducted by the state Medical Examiner's office, however, found that the cause of death was electrocution.

Consolidation Coal continued to assert that young Ballard had died of natural causes. Before a medical examination was complete, the company informed local MSHA offices by telegram, telephone and mailgram that Ballard's death "was not due to any mining-related accident." Apparently, the company's assertion was sufficient. The MSHA inspector sent to investigate was ordered by his supervisor not to issue a closure order to secure evidence at the scene, though this should be routine procedure in MSHA investigations of fatalities.

Coal company officials challenged the medical opinions of both the local coroner and the assistant state medical examiner. They pressed for an autopsy case review which

was conducted by the Armed Forces Institute of Pathology (AFIP), and a tissue scan by a state forensic scientist.

The AFIP review concluded that, although circumstantial evidence favored electrocution, the cause of death was "undetermined" because no equipment malfunction had been found. Of course no malfunction was discovered -- a full investigation never took place.

With that case review in hand, Consol appealed to the Fatality Review Committee to overturn the Ballard fatality ruling. The MSHA district manager argued the company's case, relying on the AFIP report, which he referred to as a "second autopsy," although no such autopsy was ever performed. The committee accepted the district manager's arguments and voted unanimously to overturn the fatality ruling. In their written decisions, two of the three committee members referred to the nonexistent "second autopsy."

For the committee to base such an important decision on erroneous information and questionable interpretation of findings raises serious questions about the operation of the Fatality Review Committee. And evidence suggests this is not an isolated case. Given the potential impact of these decisions on industry fatality statistics, it is clear that a full investigation is warranted into both past and present actions of the committee. To this end,

the United Mine Workers has requested detailed records of all cases from 1980 to the present. We hope to make specific recommendations to Congress after completing a review of those cases.

Quality of MSHA Inspections

The level and quality of inspections at coal mines is primarily the result of decisions made at the highest level of the Agency. If the Agency is not staffed with sufficient personnel to conduct regular inspections, technical inspections and investigations, the level of inspection will decline. If the Agency does not direct those resources appropriately, the quality of inspections diminishes.

MSHA carries out many functions under the Act, such as providing education, training and technical assistance to the industry and the miners. These are necessary functions, but enforcement is the real backbone of the Mine Act. Mandatory regular inspections are a necessary part of the enforcement system, without which the level of health and safety across the nation would diminish. With the current competitiveness in the coal market place, enforcement increases in importance -- There are economic incentives to cut costs, including those associated with health and safety. To have a quality enforcement program,

not only does the Agency have to maintain appropriate staff levels, it also must assure that sufficient personnel are assigned to the Technical Support roles.

For example, the February 16, 1984 mine explosion which claimed three lives at Pennsylvania Mines Corporation's Greenwich Collieries highlighted the problem of operating with a shortage of MSHA personnel. The investigation into that explosion disclosed that MSHA was not completing regular inspections at that mine, although they were recording them as being completed. Additionally, ventilation, roof control and electrical specialists were being pulled off their jobs to do regular inspections in the attempt to keep up. One MSHA ventilation specialist testified that he was behind 1-1/2 to 2 years in mine ventilation reviews.

Just before the explosion, both the MSHA resident inspector and the local union health and safety committee requested a ventilation inspection. Both were turned down. According to an MSHA official, the reason was the lack of personnel. Six days after the Union's request, the faulty ventilation system caused the explosion.

The lesson should be clear: If resources are cut short and support activities are not maintained -- whether it be ventilation, electrical, roof control, dust, noise or other such special inspections or investigations -- miners will suffer.

The Agency must also send the right messages to the inspectors if they are to carry out the intent of Congress. In 1981, the head of the Agency informed the various districts about a new approach to mine health and safety. He discussed the need to be less adversial and more cooperative, and said that inspectors should not look under every rock or behind every door for violations. He said this after one of the worst safety records in almost ten years. Is MSHA paying attention to what is happening in the industry?

Those remarks had effects on enforcement. By 1983, the number of citations, orders, penalties and violations considered S.&S. had virtually hit bottom. Dangerous accumulations of methane, spillage of flammable and combustible coal dust along conveyor belts, continuing operations with mine fans down and numerous other serious violations were considered insignificant, subject to the new $20 penalty.

When the Agency allowed abuses to continue, miners protested and became much more aggressive in pushing MSHA to enforce the law. While the miners' actions improved mine level enforcement, the top level of the Agency continued to resist changing its cooperative approach. To this day, cooperation with the industry takes precedence over enforcing the law and miners pay with their lives.

Underground Coal Mine Safety Standards

In addition to the relaxation of enforcement, MSHA has been making a comprehensive review of underground coal mining standards since 1982. We have a great deal of concern about the intent of this review and the direction of the proposals that MSHA has made. One expressed purpose of this review was to update existing provisions consistent with advances in mining technology. Instead of basing its regulatory review on historic mine fatality and accident data, which clearly indicate necessary regulatory changes, the Agency has proposed regulations conducive to the economic gains of coal operators. We believe this clearly violates the intent of Congress. Title III of the Federal Coal Mine Safety and Health Act of 1977, which contains the interim mandatory safety standards for underground coal mines, provides for revisions of those standards to "improve" them and to "provide increased protection" to miners. Revisions, must be directed at improving the health and safety of the miners. The Mine Safety and Health Administration has not complied with this mandate, but has strayed far off course in its regulatory review.

A general overview of MSHA's Roof, Face and Rib Support proposal indicates that it has not addressed problems in the industry that have claimed, and will continue to

claim, miners' lives. Roof, face and rib falls historically are the leading killer of coal miners. In the period between 1979 and 1984, these falls accounted for 46 percent of all coal mining deaths. In 1983 the UMWA investigated a roof fall that killed a supervisor at Empire Energy's Eagle No. 5 mine. We learned that MSHA had approved a roof control plan that required no overhead roof support. The plan relied, instead, on one row of posts, which left 16 feet of unsupported roof for the entire length of the entries. Is this an example of being consistent with improvements in mining technology? This might have been an acceptable plan fifty years ago, but it ignored all modern roof control technology. This inadequate plan had been approved over the objection of the MSHA District roof control specialist.

Despite the 1983 fatality, the operator's roof control plan was only slightly modified. It still relied upon the use of posts instead of roof bolts. MSHA's District Manager Barton told the UMWA that he considered the plan sufficient because there had only been two roof falls at the mine.

Further investigation revealed, however, that there had been 45 reported roof falls at the mine. When confronted with this information, the District Manager still refused to upgrade the roof control plan.

The following year, another miner was killed in a roof fall at the Eagle No. 5 mine. By that time, MSHA had approved a roof bolting plan for the mine -- but had left it up to the company's discretion when, and if, to use it. Pressure from UMWA members ultimately forced the operator to install full overhead roof support. After the company had agreed to implement the overhead roof bolting plan, the Agency finally required full overhead bolting.

In the course of its investigation, the UMWA discovered that the District manager had approved a similar substandard plan at Northern Coal Company's Rienau mine. It had resulted in the death of miners in a July 1981 roof fall. The UMWA was able to obtain two documents which demonstrated that, prior to these miners' deaths, several of the MSHA District staff had complained that the plan was inadequate. MSHA District #9 has also approved other plans and actions that have been implicated in tragicies. The most widely known of those involved the Wilberg Mine.

Although most large coal mines are required to have a full-overhead bolt plan to protect miners from falling roof, MSHA District #9 did not require some of them until after miners were killed. Another segment of the industry, however has had roof control plans approved that did not protect miners from roof falls -- that is at the small mines. Although this segment of the industry has

had a large number of fatal roof control accidents, the measures to control them were ignored. Mining plans have been approved at a large number of small mines that permitted the operator to mine excessively wide entries which increased the pressures on the mine roof. Full overhead bolting was not required and the old post systems were allowed to be used. Those plans in many cases required the miner to knock out the posts eliminating support of the roof over their heads so the machine used to cut coal can maneuver around the wide areas mined out. The operators of the mining equipment, at some of those mines don't even have a canopy over their heads to protect them from being crushed by roof falls. These plans which allow excessive widths to be mined with miners unprotected because their company doesn't have to install roof bolts to protect them are approved so the machine or type of mining can be utilized. Far too many miners have been killed when these plans have been used.

Despite these clear indications of the need for improved regulation of roof control, MSHA's proposed rules fall far short of requiring the protections necesary to reduce roof fall fatalities. For example, MSHA's proposals would:

- Allow continuation of inferior roof control measures.

- o Exclude miners and their representatives from participation in roof control plan development.

- o Eliminate the mandatory six-month review of the roof control plan.

- o Allow small mines to continue using excessive entry widths and exempt them from full overhead roof bolting and automated temporary roof support systems.

- o Allow operators to reduce the number of escapeways rather than employ necessary roof control measures.

- o Not require the use of new technology such as roof movement indicators, ultrasonic roof convergence monitors, linear surveys from satellite imagery, methane detector probes and extendible line curtain, the proposed rules failed to require many other needed protections that the accident information clearly shows is necessary.

MSHA's attack on the underground ventilation standards were even more threatening to miner's safety protection than the roof control proposals. For example, MSHA proposals would allow every coal mine operator to use a two-

entry mining system such as that at the Emery Mining Corporation's Wilberg Mine, where 27 miners were trapped and died. The distinguishing feature of this system is that, during the development of the longwall panel, only two entries are cut through the coal, instead of the usual three or four. Under the two-entry system, return air, contaminated with coal dust and methane from the face, is allowed to pass through the belt haulage entry. The air, in essence, goes up the intake entry used for transporting material and equipment, crosses the face and picks up the coal dust and methane liberated as the coal was extracted, and returns down the belt entry.

At the time of the Wilberg fire, the operator was using a two-entry system that had been approved by MSHA. The investigation of that disaster highlighted the serious drawbacks posed by the two-entry system. These included reduced escape routes, reduced fresh air entries, increased explosion hazards and increased possibility of exposure to higher levels of respirable dust. Under this system, deadly smoke from any fire on the intake entry automatically is dumped onto both of the entries, thereby contaminating <u>all</u> of the miners' escape routes. They were trapped. And 27 of them died because of it.

The Mine Safety and Health Act precludes the combination of belt and return entries. Yet approximately 13

mines had approved two-entry systems at the time of the Wilberg disaster, in MSHA District 9 (the West). Under normal procedures, operators wishing to use the two-entry system must petition to modify the existing standard. MSHA, however, gave its district manager total control over the issue, and sidestepped the requirement that the miners be a party to the proceeding. MSHA justified its action on the basis of an excessively broad interpretation of the grandfathering provision of Section 303(y) of the Act.

After the Wilberg disaster, MSHA imposed a moratorium on the approval of two-entry systems, and required operators who wished to implement such systems, to file a petition for modification. The moratorium on two-entry systems was lifted in July of 1985 and MSHA immediately began processing operators' petitions for modifications.

In its eagerness to allow operators to implement two-entry mining systems, MSHA chose to circumvent the procedural rights afforded miners by the statute. In two instances, the Agency allowed operators to implement two-entry systems over the protest of the UMWA, and without affording the affected miners the opportunity for a prior hearing on the record. When the UMWA protested, we were informed that no one in the Agency had the authority to review the decision made by MSHA's Chief of Safety for Coal Mine Safety and Health.

The Agency has justified its action on the grounds that it had merely afforded the operator temporary relief, until the operator's petition for modification was decided. The Agency's characterization of its action as "temporary," however, has proven to be a total sham.

As a result, miners have been deprived of their statutory right to a hearing while operators have been allowed to "temporarily" mine under a two-entry system for almost a year. MSHA's handling of this matter raised several compelling questions to which the Agency has not effectively answered that they should be required to respond to. These include:

1. Why did the task force instituted after the Wilberg disaster focus on how two-entry systems could be improved, rather than seeking to determine the safe methods of mining with multiple entries?

2. Why have MSHA officials, in their meetings with the UMWA, refused to discuss alternative measures for controlling roof conditions where two-entry systems have been proposed?

3. Why was it so imperative, that operators be allowed to implement two-entry systems?

4. And why did the Agency run the Union through a legal maze when we appealed their actions?

It is our conviction that two-entry mining systems eliminate miners' protections. In the days following the Wilberg fire, when the fate of the victims was still unknown, news reports continually referred to safe areas in the mine. The uninformed public assumed that there were rooms or areas in which the miners would find fresh air and water. There are no such areas. Miners can only build barricades out of whatever materials they can find. Because of the two-entry system at Wilberg, the miners had no chance of escape, even though it is clear that they lived long enough to do so if an escape route been available. We should not allow more miners to be caught in a deadly trap with no means of escape.

Again, despite clear indications of the need for improved protections, the MSHA has proposed to revise the ventilation standards which would:

1. Increase the allowable levels of methane in the mine atmosphere before corrective actions must be taken. In light of the more than ten mine explosions that have occurred in the United States since 1970, such action is incomprehensible.

2. Eliminate the six-month mandatory review of mine venilation plans.

3. Exclude miners and their representatives from participation in mine venilation plan development.

4. Eliminate the 20-minute methane test requirement in the working coal face.

5. Eliminate the requirement to maintain ventilation to within ten feet of the coal face.

6. Eliminate the requirement for methane bleeder systems at some mines.

7. Allow belt conveyor haulageways, which have a high potential for fires, to serve as intake and return air courses, thereby increasing risks to miners.

The Agency is revising several other standards and with the similar approach. It ignors the deaths and injuries in the mines.

The issues we have raised today are of critical importance to the lives of coal miners across the nation. If MSHA is permitted to proceed on the course it has charted, miners will suffer and die unnecessarily. We seek your

committee's support in directing this Agency to refocus its attention -- away from "operator interests" and toward health and safety protection of miners.

Mr. Chairman, we would like to thank you again for the opportunity of appearing here today to address these very important matters. As stated in our initial comments, we are requesting that a full oversight hearing be held, which will provide the opportunity to address, in more detail, the matters that we briefly highlighted in our testimony today, along with other matters that affect the health and safety of coal miners across the nation.

That hearing should be designed to provide a full overview of the manner in which the Mine Safety and Health Administration has been carrying out its responsibilities under the Act.

Thank you.

ATTACHMENTS

6-28-86

I request a 103 g inspection of the following accidents not reported to M.S.H.A for May 1986

1. Don Hodson
2. B.J. Smith = a reoccurrence

Chairman of Safety Comm.
Larry L. Kramer
6-28-86

Mine Safety and Health Administration

Section I - Violation Data

1 Date: Mo 5 Da 26 Yr 86 | 2 Time (24 Hr Clock): 0800 | 3 Citation/Order Number: 2678831

4 Served To: Kit Shaw | Operator: Consolidation Coal Company

6 Mine: Kelleysville Mine | 7 Mine ID: 36-04281-0 (Contractor)

8 Condition or Practice: 8a Written Notice (103a) ☐

The operator did not complete an accident, injury and illness report for Donald who was injured 5-29-86 in an mine accident and missed one day of work 5-30-86. Donald was treated by the doctor the second time June 2 1986 and returned to work the same day.

9 Violation: A Health ☐ Safety ☐ Other ☒ | B Section of Act | C Part/Section of Title 30 CFR: 50.20-6 | See Continuation Form (MSHA Form 7000-3a) ☐

Section II - Inspector's Evaluation

10 Gravity:

A. Injury or Illness (has) (is): No Likelihood ☒ Unlikely ☐ Reasonably Likely ☐ Highly Likely ☐ Occurred ☐

B. Injury or Illness could reasonably be expected to be: No Lost Work days ☒ Lost Workdays or Restricted Duty ☐ Permanently Disabling ☐ Fatal ☐

C. Significant and Substantial (See Reverse): Yes ☐ No ☒ | D. Number of Persons Affected: 000

11 Negligence (check one)

A. None ☐ B. Low ☐ C. Moderate ☒ D. High ☐ E. Reckless Disregard ☐

12 Type of Action: 104-a-, | 13 Type of Issuance (check one): Citation ☒ Order ☐ Safeguard ☐

14 Initial Action: A. Citation ☐ B. Order ☐ C. Safeguard ☐ D. Written Notice ☐ | E. Citation/Order Number | F. Dated Mo Da Yr

15 Area or Equipment

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16 Termination Due: A. Date Mo 07 Da 14 Yr 86 | B. Time (24 Hr Clock): 1300

Section III - Termination Action

17 Action to Terminate

18 Terminated: A. Date Mo Da Yr | B. Time (24 Hr Clock)

Section IV - Automated System Data

19 Type of Inspection (activity code): AA4 | 20 Event Number: 5377333 | 21 Primary or Mill

22 Signature: Clarence D Kuntz | 23 AR Number: 2037

MSHA Form 7000-3, Mar 85 (Revised)

Section I - Violation Data

1 Date: Mo 06 Da 16 Yr 86 | 2 Time (24 Hr Clock): 0800 | 3 Citation/Order Number: 2678832

4 Served To: Kit Shaver

5 Operator: Consolidation Coal Company

6 Mine: Ledwarth Mine | 7 Mine ID: 36-00128 | (Contractor)

8 Condition or Practice | 8a Violation Vacated (103a)

The operator had not complete an initial accident, injury and illness report for K. W. Smith who was injured 5-12-86. Smith was off work from 5-1-86 through June 9-1986 a total of 15 days off work.

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See Continuation Form (103a) Form 7000-3a1

9 Violation | A Health ☐ Safety ☐ Other ☒ | B Section of Act | C Part/Section of Title 30 CFR: 50.20-6

Section II - Inspector's Evaluation

10 Gravity:

A Injury or Illness (has) (is): No Likelihood ☒ Unlikely ☐ Reasonably Likely ☐ Highly Likely ☐ Occurred ☐

B Injury or Illness could reasonably be expected to be: No Lost Workdays ☒ Lost Workdays or Restricted Duty ☐ Permanently Disabling ☐ Fatal ☐

C Significant and Substantial (See Reverse) Yes ☐ No ☒ | D Number of Persons Affected: 000

11 Negligence (check one)

A None ☐ B Low ☐ C Moderate ☒ D High ☐ E Reckless Disregard ☐

12 Type of Action: 104-(a)-1 | 13 Type of Issuance (check one): Citation ☒ Order ☐ Safeguard ☐

14 Initial Action: A Citation ☐ B Order ☐ C Safeguard ☐ D Written Notice ☐ | E Citation/Order Number | F Dated Mo Da Yr

15 Area or Equipment

16 Termination Due | A Date: Mo 07 Da 14 Yr 86 | B Time (24 Hr Clock): 0800

Section III - Termination Action

17 Action to Terminate

18 Terminated | A Date: Mo Da Yr | B Time (24 Hr Clock)

Section IV - Automated System Data

19 Type of Inspection (activity code): AAVJ | 20 Event Number: 433733 | 21 Primary or Mill

22 Signature: Warren D. Marks | 23 AR Number: 3037

MSHA Form 7000-3, Mar 85 (Revised)

5-22-86

I request a 103 g inspection on the following accidents that occurred at Dilworth mine that where not reprited to M.S.H.A.

1. Gerald Cederko = 1-26-85
2. Larry Swift = 3-17-86
3. Bill Kolar = 4-24-86
4. Stanley Stockdale = 4-24-86 or 4-27-86

Chairman of Safety Committ.
Leroy H. Kramer
5-23-86

Copy to local Union # 1980

Section I - Violation Data

1 Date: Mo 06 Da 02 Yr 86 | 2 Time (24 Hr Clock): 0800 | 3 Citation/Order Number: 2683636

4 Served To: Kit Pharis | 5 Operator: Consolidation Coal Company (Contractor) ID: 36-04281

6 Mine: Delworth Mine

8 Condition or Practice | 8a Withdrawal Notice: No

The operator did not complete an injury accident, injury and Illness Report for Dale's Onderko, who was injured, 1-28-85 in an injury accident and was recently awarded compensation.

See Continuation Form (MSHA Form 7000-3a) ☐

9 Violation: A Health ☐ Safety ☐ Other ☒ | B Section of Act | C Part/Section of Title 30 CFR: 50.20-6(b)

Section II - Inspector's Evaluation

10 Gravity:

A Injury or Illness (has) (is): No Likelihood ☒ Unlikely ☐ Reasonably Likely ☐ Highly Likely ☐ Occurred ☐

B Injury or Illness could reasonably be expected to be: No Lost Workdays ☒ Lost Workdays or Restricted Duty ☐ Permanently Disabling ☐ Fatal ☐

C Significant and Substantial (See Reverse): Yes ☐ No ☒ | D Number of Persons Affected: 009

11 Negligence (check one)

A None ☐ B Low ☐ C Moderate ☒ D High ☐ E Reckless Disregard ☐

12 Type of Action: 104(a) | 13 Type of Issuance (check one): Citation ☒ Order ☐ Safeguard ☐

14 Initial Action: A Citation ☐ B Order ☐ C Safeguard ☐ D Written Notice ☐ | E Citation/Order Number | F Date: Mo Da Yr

15 Area or Equipment

16 Termination Due: A Date Mo 06 Da 16 Yr 86 | B Time (24 Hr Clock) 0800

Section III - Termination Action

17 Action to Terminate

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18 Terminated: A Date Mo Da Yr | B Time (24 Hr Clock)

Section IV - Automated System Data

19 Type of Inspection (activity code): AAA | 20 Event Number: 539733 | 21 Primary or Mill

JUL 01 1986

22 Signature: Clarence D. Mostz | 23 MR Number: 20370

MSHA Form 7000-3, Mar 85 (Revised)

1. Date of original issue: 06/12/86 2. Continued Order Number: 2683636-01

3. Subsequent Action ☒ Continuation ☐ 4. Date: 06/12/86 5. Time (24 hr clock): 1300 18. Issued by: Ken Dudick

7. Operator: Consolidation Coal Company Mine: Dilworth Mine 8. Mine ID: 36-04281-[ ] (Corrected)

Justification For Action

A mine accident, injury and illness report form 7000-1 for Gerald Anderson was completed 6-9-86

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9. Extended To ☐ 9a. Date: [ ] 9b. Time (24 hr clock): [ ] 10. Vacated ☐ Terminated ☒ Modified ☐

11. See Continuation Form ☐ 12. Type of Inspection: AAA 13. Event Number: 5397333 JUL 01 1986

14. Signature: Clarence D. Nuss AR Number: 2037670

MSHA Form 7000-3a, Apr 82 (revised)

United States Department of Labor

MINE SAFETY AND HEALTH ADMINISTRATION
OFFICE OF ASSESSMENTS

36-[illegible]-03571
Mine Identification Assessment Control No

CERTIFIED MAIL- RETURN RECEIPT REQUESTED

PROPOSED ASSESSMENT

Date AUGUST 25, 19

Upon reviewing the violations cited in the attached citations and orders and the data supplied by the Secretary's Authorized Representative and all other information supplied concerning these citations and orders, MSHA finds that the violations cited on the attached sheet did in fact occur and applying that data to the assessment regulations described in 30 CFR 100, MSHA proposes the penalty specified.

Pursuant to 30 CFR 100.7, you have 30 days from receipt of this proposed assessment to either pay the penalty, or notify MSHA that you wish to contest the proposed assessment and that you request a hearing on the violations in question before the Federal Mine Safety and Health Review Commission. If you do not exercise the rights herein described within 30 days of receipt of this proposed assessment, this proposed assessment will become a final order of the Commission and will be enforced under provisions of the Federal Mine Safety and Health Act of 1977.

For violations assessed under the formula described in 30 CFR 100.3, the points assigned for the size of the operator (Column A) are derived from applying Subsection 100.3(b) of 30 CFR 100 using the size of your company as [illegible] production tons or hours worked per year and the size of your mine as [illegible] production tons or hours worked per year. The points assigned for the history of previous violations (Column B) are derived from applying Subsection 100.3(c) of 30 CFR, that is, the number of violations assessed per year or number of violations assessed per inspection day. The points assigned for negligence (Column C) are derived from applying Subsection 100.3 (d) of 30 CFR, that is, finding either no negligence, low negligence or high negligence or reckless disregard. The points assigned for gravity (Column D) are derived from applying Subsection 100.3(e) of 30 CFR, that is the likelihood of the occurrence of the event against which the standard is directed, the severity of the injury or illness if it occurred or were to occur, and the number of persons potentially affected if the event occurred or were to occur. The points or percentage reduction assigned for the demonstrated good faith of the operator charged in attempting to achieve rapid compliance or the effects thereof (Column E) are derived from applying Subsection 100.3(f) of 30 CFR, that is, finding either good faith or a lack of good faith. Single Penalty Assessments and Special Assessments are developed in accordance with Subsection 100.4 and 100.5 of 30 CFR respectively.

Payment Must Be Sent To:

MINE SAFETY AND HEALTH ADMINISTRATION
P. O. BOX 360250M
PITTSBURGH, PA 15251

Lawrence M Brennan
Director, Office of Assessments

Notice of Contest filed Regarding this Proposed Assessment Must be addressed to the:

MINE SAFETY AND HEALTH ADMINISTRATION
CIVIL PENALTY PROCESSING UNIT
4015 WILSON BOULEVARD, RM. 930
ARLINGTON, VA 22203
TELEPHONE: (703) 235-8315

Company: CONSOLIDATION COAL COMPANY
Attention: SAFETY DEPARTMENT
Address: 450 RACETRACK ROAD
City: WASHINGTON PA 15301

Mine Name: GILWORTH MINE
Mine Location: NICLS LANDING GREENE COUNTY PA

Form 1000-179 (MSHA)

0210

151

Citation or Order Number	Date	Type of Action	Health or Safety Standard Violated: CFR Title 30	(A) Size of Operator: Mine Points	(A) Size of Operator: Controller Points	(B) History of Previous Violations: Total Number of Assessed Violations Divided by Total Number of Inspection Days	(B) History of Previous Violations: Assessed Violation Points	(B) History of Previous Violations: Total Number of Paid Violations Divided by Total Number of Inspection Days	(B) History of Previous Violations: Inspection Day Points	(C) Negligence Points	(D) Gravity: Likelihood of Occurrence Points	(D) Gravity: Seriousness Points	(D) Gravity: Number of Persons Affected Points	(E) Lack of Good Faith Points	Total Points	Penalty Amount based On Total Points	S. Reduction For Good Faith	Proposed Penalty
2678823 ✓	06/17/86	104A	C	75.1713-7A3	9	5	223		523	2	15	5	3	6		45	$255.00	Y	$178.50
2678823 ✓	06/24/86	104A	C	75.200	9	5	223		528	4	10	5	3	1		35	$130.00	Y	$91.00
2678830 ✓	06/25/86	104A	C	75.1403	9	5	223		528	4	15	5	3	1		40	$190.00	Y	$126.00
[redacted] ✓	06/26/86	104A	C	90.203								SINGLE PENALTY ASSESSMENT							$20.00
[redacted] ✓	06/26/86	104A	C	90.203								SINGLE PENALTY ASSESSMENT							$20.00
2678537 ✓	07/22/86	104A	C	75.202	9	5	229		547	2	10	5	7	1		39	$170.00	Y	$119.00

MSHA (REVISED) 30-04281 03571

Total Proposed Penalties $554.00

Section I - Violation Data

1 Date: Mo 06 Da 02 Yr 86 | 2 Time (24 Hr Clock): 08 00 ST | 3 Citation/Order Number: 2083637

4 Served To: Kit Rivera | 5 Operator: Consolidation Coal Company

6 Mine: Dilworth mine | 7 Mine ID: 36-04281-1 (Controller)

8 Condition or Practice | 8a Action Taken: 103(a) X

The operator did not complete an mine accident, injury and Rivera report Form 7000-1. for Jerry Swift, who was injury by a mine accident Monday 3-17-86 and was Advised by Waynesburg Hospital Emergency room physician to take Tuesday 3-18-86 apply ice on calf muscle of the leg and make an appointment with Company Physician. Jerry Swift missed 1 day of work returned to work 3-19-86.

See Continuation Form (MSHA Form 7000-3a) ☐

9 Violation | A Health ☐ Safety ☐ Other X | B Section of Act | C Part/Section of Title 30 CFR: 50.20-6

Section II - Inspector's Evaluation

10 Gravity:

A Injury or Illness (has) (is): No Likelihood X | Unlikely ☐ | Reasonably Likely ☐ | Highly Likely ☐ | Occurred ☐

B Injury or Illness could reasonably be expected to be: No Lost Workdays X | Lost Workdays or Restricted Duty ☐ | Permanently Disabling ☐ | Fatal ☐

C Significant and Substantial (See Reverse): Yes ☐ No X | D Number of Persons Affected: 00

11 Negligence (check one)

A None ☐ | B Low ☐ | C Moderate X | D High ☐ | E Reckless Disregard ☐

12 Type of Action: 104(a) | 13 Type of Issuance (check one): Citation X | Order ☐ | Safeguard ☐

14 Initial Action: A Citation ☐ | B Order ☐ | C Safeguard ☐ | D Written Notice ☐ | E Citation/Order Number | F Date | Time | Da | Yr

15 Area or Equipment

16 Termination Due: A Date Mo 06 Da 16 Yr 86 | B Time (24 Hr Clock) 0800

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Section III - Termination Action

17 Action to Terminate

18 Terminated: A Date Mo Da Yr | B Time (24 Hr Clock)

Section IV - Automated System Data

19 Type of Inspection (activity code): AAA | 20 Event Number: 5397333 | 21 Primary or Mill

22 Signature: Clarence D. Moore | 23 AR Number: 2037

JUL 01 1986

MSHA Form 7000-3, Mar 85 (Revised)

1. Original Issuance: Mo. 06 Da. 28 Yr. 86 — Citation/Order Number: 2636371-01

3. Subsequent Action X — Continuation ☐ — 4. Date: Mo. 06 Da. 12 Yr. 86 — 5. Time(24 hr clock): 1305 — 6. Served: Ken Dudick

7. Operator: Consolidation Coal Company — Mine: Dilworth Mine — 8. Mine ID: 36-04281-1

Justification For Action

A mine accident, injury, and illness report for 7000-1 for Jerry Swift was completed 6-9-86

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9. Extended To: ☐ — 9a. Date: Mo. Da. Yr. — 9a. Time(24 hr clock): — 10. Vacated ☐ — Terminated X — Modified ☐

11. See Continuation Form ☐ — 12. Type of Inspection: A — 13. Event Number: 5397333 — JUL 01 1986

14. Signature: Clarence D. Woods — AR Number: 2236760

MSHA Form 7000-3a, Apr 82 (revised)

Section I - Violation Data

1 Date: Mo 06 Da 02 Yr 86 | 2 Time (24 Hr Clock): 0800 | 3 Citation/Order Number: 2083638

4 Served To: Ref Rhoten

5 Operator: Consolidation Coal Company

6 Mine: Dilworth mine | 7 Mine ID: 36-04241 | 7a Inspection Activity Code

8 Condition or Practice | 8a Violation Type (103a): X

The operator did not complete an mine accident, injury and illness report form 7000-1 for Stanley C. Stockdale who was injured by a mine accident april 24-1986 and suffered acute left low back strain. Stockdale has filed a new disability claim and is receiving compensation at the present time.

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See Continuation Form (MSHA Form 7000-3a) ☐

9 Violation | A Health ☐ Safety ☐ Other X | B Section of Act | C Part/Section of Title 30 CFR: 50.20-(b)

Section II - Inspector's Evaluation

10 Gravity

A Injury or Illness (has) (is): No Likelihood X | Unlikely ☐ | Reasonably Likely ☐ | Highly Likely ☐ | Occurred ☐

B Injury or Illness could reasonably be expected to be: No Lost Workdays X | Lost Workdays or Restricted Duty ☐ | Permanently Disabling ☐ | Fatal ☐

C Significant and Substantial (See Reverse): Yes ☐ No X | D Number of Persons Affected: 000

11 Negligence (check one)

A None ☐ | B Low ☐ | C Moderate X | D High ☐ | E Reckless Disregard ☐

12 Type of Action: V 04-A-2 | 13 Type of Issuance (check one): Citation X | Order ☐ | Safeguard ☐

14 Initial Action

A Citation ☐ | B Order ☐ | C Safeguard ☐ | D Written Notice ☐ | E Citation/Order Number | F Dated Mo Da Yr

15 Area or Equipment

16 Termination Due | A Date: Mo 06 Da 16 Yr 86 | B Time (24 Hr Clock): 0500

Section III - Termination Action

17 Action to Terminate

18 Terminated | A Date: Mo Da Yr | B Time (24 Hr Clock)

Section IV - Automated System Data

19 Type of Inspection Activity Code: AAA | 20 Event Number: 5397333 | 21 Primary or Mill | JUL 01 1986

22 Signature: Clarence O. Nevitt | 23 AR Number: 20370

MSHA Form 7000-3, Rev 85 (Revised)

1. Citation (original issue): 06/02/86 (Mo/Da/Yr) 2. Continued Citation Numbers: 2636638-01

3. Subsequent Action X Continuation ☐ 4. Date: 06/12/86 (Mo/Da/Yr) 5. Time (24 hr clock): 1310 6. Issued: Ken Mullins

7. Operator: Consolidation Coal Company, Delworth mine (Mine) 8. Mine ID: 36-04281-

Justification For Action

a mine accident, injury and illness report form 7000-1 for Stanley c Stockdale was completed 6-9-86

RECEIVED
JUL 01 1986
MONROEVILLE
MSHA

9. Extended To ☐ 9a. Date (Mo/Da/Yr): 10. Vacated ☐ Terminated ☐ Modified ☐

11. See Continuation Form ☐ 12. Type of Inspection: AAA 13. Event Number: 537733 JUL 01 1986

14. Signature: Clarence D Mintz

MSHA Form 7000-3a, Apr 82 (revised) AR Number: 20370

Mr. BLAKEY We thank you for your testimony and, as Senator Kennedy said, it will be entered in the record in full.

Mr. Ryan, I apologize again for the circumstances. Please proceed, and if you would identify your colleague to your right and my left.

Mr. RYAN. My name is Patrick Ryan, director of Loss Prevention and Administration for AMAX Coal Co. To my right is Henry Chajet, who is with the American Mining Congress and on my left is Bobby Jackson, director of safety for ASARCO.

I would like to start off by indicating that the American Mining Congress and its member companies are committed to safety and we are dedicated to providing a safe and healthful workplace for our work force.

We appreciate the opportunity this afternoon to discuss these important issues regarding mine safety and health and we would also point out that we believe that the Mine Safety and Health Administration has in good faith attempted to achieve the goals of the Mine Health and Safety Act. But to achieve that goal, there must be an efficient safety and health administration, and to that end this afternoon we would like to relate some concerns.

First of all, there have been some recent allegations that there is a need for more inspectors in order to complete the mandatory health and safety inspections at all mines. We feel that those allegations are in fact a distraction from the real issue. The real issue is allocation of resources, the allocation of inspector resources. We believe that there is a more effective focus and that is to focus that inspector attention to high-risk locations.

One other item that we would like to bring to your attention is we believe there is excessive MSHA presence in many of our mines. For example, in 1985, in the underground area, the Sentinels of Safety Winner, which represents the safest underground coal mine for that particular year, received 308 Federal inspection days. In addition to that, there were 58 State inspection days.

One other item in that regard is that one of our AMAX mines, an underground mine, had 369 inspection days in the year 1985, with 101 State inspection days. That is a great deal of presence for regardedly safe mines.

There are other mines that have an even greater—presence.

Mr. ROLLINS. May I interrupt a second? My name is Tom Rollins and I represent Senator Kennedy. Did you say at the mines there are 308 Federal inspection days for the safe mine?

Mr. RYAN. That is correct.

Mr. ROLLINS. Thank you.

Mr. RYAN. The safest mine for 1985 was an underground mine, and the Sentinels of Safety Award is sponsored by the American Mining Congress and MSHA, recognizing the safest mine for that given year.

I would like to go on by indicating that we do not think that Congress intended for that kind of presence at regardedly safe mines.

Another concern that we have is the inappropriate use of severe enforcement tools. Severe enforcement tools in the terms of "S&S" violations which is significant and substantial. Significant and substantial violations are in fact a trigger mechanism for closure orders, and it should be reserved for serious violations. However,

we have seen an increased use in the issuance of S&S violations for nonserious or other than serious violations.

As an example, there was one mine, three consecutive shift violations issued under S&S that are reserved for serious violations for failure to conduct regularly scheduled fire drills because they were 1 week late. Clearly, this is an indication of purely a technical violation, rather than a serious violation.

Additionally, in 1982, 23 percent of all violations that were issued were S&S. In 1985, there was an increase to 64 percent. That substantive increase has not been shown based on any deterioration of safety experience.

I would like to make a remark about one other very strong enforcement tool, and we think inappropriate use thereof. That area is unwarrantable failure citations which MSHA has interpreted to this point as should have known that the violation exists, that is the operator should have known that there was the existence of a violation, and that is a very strong enforcement tool when that is utilized. Obviously, any citation or any violation that may be in existence can be interpreted that the operator should have known about that.

The use of unwarrantable failures as a strong enforcement tool has increased. In 1983, there were 2,000 issued; in 1985 there were 4,000 issued. This is a very strong enforcement tool and also leads to closure orders.

As an example of inapproriate use of the unwarrantable failure citation, there was in fact an unwarrantable failure citation issued to an operator, even though the operator in fact had recognized there was a condition that needed to be corrected, a violation. An inspector noted it, they were, in fact, in the process of cleaning it up, and an unwarrantable failure was issued.

We do not believe again that that is the appropriate use of that strong tool, nor do we believe that Congress intended that it be used that way.

The use in nonserious violations of the unwarrantable and S&S as strong enforcement tools unfortunatebly impact negatively upon the cooperative relationship between the operators and the mine enforcement agency. We believe, rather, that there should be a focus on inspections, enforcement, toward actual need, areas where there are identifiable needs. That reallocation of resources would better serve that purpose.

Last, I would like to indicate that I believe that MSHA can within itself solve many of these problem areas and we believe that the MSHA Act can be in fact more effectively administered.

Thank you. The remainder of our testimony will be provided by Bobby Jackson, of ASARCO.

Mr. JACKSON. Gentlemen, my name is Jackson and I am the corporate director of safety for ASARCO, Inc., a metal mining company.

Most of the topics Mr. Ryan has addressed up to this point deal with coal issues and I am going to address some metal and nonmetal issues. Our AMC member companies have the same problems as expounded on by Mr. Ryan, however, it is not as extensive as the coal sector. In fact, in general we have been able to resolve many

of our problems through close communication with MSHA. We agree, however, that improvements in MSHA can and are needed.

Let me express two areas of concern in the area of enforcement. We, too, are concerned about excessive use of strong enforcement tools, specifically, in the area of S&S or significant and substantial citations.

In 1981, in the metal and nonmetal industry, 90 percent of all citations were classified as S&S. In 1982, only 20 percent were classified as S&S. This is a direct result of the Review Commission decision restricting MSHA's practice of classifying virtually all citations as S&S. However, we see since 1982, when it was 20 percent, that figure has crept up to 40 percent. Again, we think this is excessive.

Total citations issued also present a problem. According to MSHA data, in 1983, in metal and nonmetal, there were 14,700 total citations issued. In the first 6 months of 1986, 13,700 have been issued. This is a significant increase and certainly causes us concern, especially in light of the fact that there have been substantial decreases in the mining sector, in population, employment, and production.

In our formal printed testimony we present some examples of these decreases in employment. Of the six commodities that we address in our presentation, copper cetainly stands out. In 1979, there were 41,000 employees in the copper industry in this country. In 1985, there were 16,000—from 41,000 to 16,000, and yet at the same time we continue to face increased citations.

Excessive inspector presence, as Mr. Ryan alluded to, in many mines that remain open, and particularly in safer mines is a problem with us also. Let me give you an example. We have an underground silver mine that employs about 160 people. This mine has worked 532 days without a single disabling injury. That is about 15 months. Yet, during approximately the same time period, MSHA has been in that mine for a total of 110 inspection days. This is just one example, a single example of MSHA's failure to allocate its inspection resources appropriately.

Now, our industry was very enthused when in 1980 MSHA announced regulatory reform. We felt this was necessary because many of the standards were vague, they were outdated, they were not meant for strict enforcement schemes and they were technologically restrictive. AMC has participated and its member companies have participated in all stages of this regulatory reform.

However, we find in the metal and nonmetal side that this pace is intolerably slow. Of 15 issues that have been addressed, only 2 sets of final standards have been issued. Now, while we wait technology is stymied, flexibility in achieving safety is prevented, costs escalate and the cause of safety, frankly, is ill-served. We in the metal and nonmetal side of the industry have become very discouraged with this slow process.

The American Mining Congress and its member companies have participated and cooperated in many activities. First of all, going on right now are AMC-sponsored seminars on MSHA enforcement, these in conjunction and with the assistance of MSHA.

AMC is very active, along with employee representatives and MSHA in the Committee on Substance Abuse that Mr. Zegeer ad-

dressed earlier. AMC is proud of its cosponsorship with MSHA of the Sentinels of Safety Award that recognizes operations with outstanding safety achievements.

However, I want to reiterate that improvements are needed in mine safety and health, either through legislative efforts, regulatory reform, or by MSHA internal initiatives or any other method, and we are prepared to cooperate on those issues.

I appreciate your time and we are certainly available for any questions.

[The prepared statement of Messrs. Ryan and Jackson and responses to questions submitted by Senators Hatch, Metzenbaum, and Kennedy to Mr. Jackson and Mr. Ryan follow:]

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AMERICAN MINING CONGRESS
TESTIMONY BEFORE THE
SENATE LABOR & HUMAN RESOURCES COMMITTEE
OVERSIGHT HEARING
ON
THE MINE SAFETY AND HEALTH ADMINISTRATION
SEPTEMBER 25, 1986

Good afternoon. I am Patrick M. Ryan, director-loss prevention and administration, for AMAX Coal Company. Testifying with me on behalf of the American Mining Congress (AMC) is Bobby J. Jackson, director of safety for ASARCO Inc. Accompanying us is Henry Chajet, AMC senior counsel.

We appreciate the opportunity to appear before you and discuss important issues relative to mine safety and health. The American Mining Congress is a national trade association representing the mining industry. Its 400 member companies are the producers of the vast majority of the nation's coal, metals, industrial and agricultural minerals; as well as the manufacturers of mining equipment and supplies.

AMC's Declaration of Policy recites our commitment "to strive continuously to promote and provide a safe and healthful working environment," and pledges our organization's continued efforts "in achieving the common goal of all parties involved in safety and health: the protection of the workforce."

The achievement of this goal, however, requires not only the dedication and commitment of mine operators and employees, but also an efficient and effective Mine Safety and Health Administration. Although we believe that MSHA has, in good faith,

attempted to carry out its mission under the 1977 Mine Safety Act, significant improvements are needed.

Coal Enforcement

The Act's enforcement provisions include mandatory inspections regardless of site-specific hazards or needs. There have been allegations that mandatory inspections are not always completed for all mines and that MSHA needs additional personnel. We view these allegations as a distraction from the real issue: the need to focus enforcement resources on high risk locations and on serious hazards.

From our perspective, MSHA spends too much time at many of our operations with exemplary safety records. Many safe mines have full-time MSHA inspectors on the property almost every day. We do not believe that when Congress mandated four yearly underground inspections and two yearly surface inspections, it intended an excessive presence at safe mine sites.

For example, the safest underground coal mine in the country, declared the winner of the Sentinels of Safety Award for 1985, experienced 308 federal inspector shifts and 58 state inspector shifts in 1985.

At one AMAX Coal Company underground mine we employ about 870 miners and produce in excess of two million tons per year. Our safety record is better than the national average, and we are constantly striving to improve it.

United States Department of Labor

MINE SAFETY AND HEALTH ADMINISTRATION
OFFICE OF ASSESSMENTS

36-04281 - 03570
Mine Identification Assessment Control N

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

PROPOSED ASSESSMENT

Date: AUGUST 3, 1

Upon reviewing the violations cited in the attached citations and orders and the data supplied by the Secretary's Authorized Representative and all other information supplied concerning these citations and orders, MSHA finds that the violations cited on the attached sheet did in fact occur and applying that data to the assessment regulations described in 30 CFR 100, MSHA proposes the penalty specified.

Pursuant to 30 CFR 100.7, you have 30 days from receipt of this proposed assessment to either pay the penalty, or notify MSHA that you wish to contest the proposed assessment and that you request a hearing on the violations in question before the Federal Mine Safety and Health Review Commission. If you do not exercise the rights herein described within 30 days of receipt of this proposed assessment, this proposed assessment will become a final order of the Commission and will be enforced under provisions of the Federal Mine Safety and Health Act of 1977.

For violations assessed under the formula described in 30 CFR 100.3, the points assigned for the size of the operator (Column A) are derived from applying Subsection 100.3(b) of 30 CFR 100 using the size of your company as 24,043,132 production tons or hours worked per year and the size of your mine as 1,611,203 production tons or hours worked per year. The points assigned for the history of previous violations (Column B) are derived from applying Subsection 100.3(c) of 30 CFR, that is, the number of violations assessed per year or number of violations assessed per inspection day. The points assigned for negligence (Column C) are derived from applying Subsection 100.3 (d) of 30 CFR, that is, finding either no negligence, low negligence or high negligence or reckless disregard. The points assigned for gravity (Column D) are derived from applying Subsection 100.3(e) of 30 CFR, that is the likelihood of the occurrence of the event against which the standard is directed, the severity of the injury or illness if it occurred or were to occur, and the number of persons potentially affected if the event occurred or were to occur. The points or percentage reduction assigned for the demonstrated good faith of the operator charged in attempting to achieve rapid compliance or the effects thereof (Column E) are derived from applying Subsection 100.3(f) of 30 CFR, that is, finding either good faith or a lack of good faith. Single Penalty Assessments and Special Assessments are developed in accordance with Subsection 100.4 and 100.5 of 30 CFR respectively.

Payment Must Be Sent To:

MINE SAFETY AND HEALTH ADMINISTRATION
P. O. BOX 360250M
PITTSBURGH, PA 15251

Lawrence M Beaver
Director, Office of Assessments

Notice of Contest filed Regarding this Proposed Assessment Must be addressed to the:

MINE SAFETY AND HEALTH ADMINISTRATION
CIVIL PENALTY PROCESSING UNIT
4015 WILSON BOULEVARD, RM. 930
ARLINGTON, VA 22203
TELEPHONE: (703) 235-1315

Company: CONSOLIDATION COAL COMPANY
Attention: SAFETY DEPARTMENT
Address: 450 RACETRACK ROAD
City: WASHINGTON PA 15301

Mine Name: DILWORTH MINE
Mine Location: RICES LANDING GREENE COUNTY PA

021

Form 1000-179 (MSHA)

160

Citation or Order Number	Date	Type of Action	Health or Safety Standard Violated: CFR Title 30	(A) Size of Operator		(B) History of Previous Violations				(C)	(D) Gravity			(E)	Total Points	Penalty Amount Based On Total Points	% Reduction For Good Faith	Proposed Penalty
				Mine Points	Controller Points	Total Number of Assessed Violations in Preceding 24 Months	Assessed Violations Points	Total Number of Inspection Days Preceding 24 Months	Inspection Days Points	Negligence Points	Likelihood of Occurrence Points	Severity of Injury Illness Points	Number of Persons Affected Points	Lack of Good Faith Points				
[redacted]	06/02/86	104A	C	30.209							SINGLE	PENALTY	ASSESSMENT					$20.00
[redacted]	06/02/86	104A	C	30.205							SINGLE	PENALTY	ASSESSMENT					$20.00
[redacted]	06/02/86	104A	C	30.208							SINGLE	PENALTY	ASSESSMENT					$20.00
3267549	06/30/86	104A	C	75.400	Y	5	223		523	2	10	5	3	1		25	$130.00	Y	$91.00

[redacted]-04201 03070

Total Proposed Penalty: $151.00

Last year this mine recorded 369 MSHA inspector shifts and 101 state inspector shifts. Through August of this year, we have recorded 316 federal inspector shifts and 78 state inspector shifts. Other large mines report a far greater MSHA presence.

This excessive inspector presence often results in unnecessary and inappropriate enforcement actions. On June 6, 1986, AMC wrote to Assistant Secretary Zegeer and relayed our concerns regarding the inappropriate use of MSHA's powerful enforcement tools. In that letter we set forth a series of examples of abusive enforcement. One of them will demonstrate our concern.

Three citations were issued to a mine, one for each shift, for failure to conduct required quarterly fire drills. The mine was one week overdue and clearly only a technical violation existed. Yet, the inspector issued three separate "significant and substantial" violations, defined by law as a reasonable probability of causing a reasonably serious injury or death.

As you know, the 1977 Mine Safety Act provides for a graduated enforcement scheme whereby all violations must be abated, but the severity of enforcement is dependent upon the gravity of the violation. Yet, the industry has witnessed an effort by MSHA to apply its more severe enforcement tools without the requisite examination regarding the gravity of the violations involved.

Prior to a landmark Mine Safety and Health Review Commission decision in April 1981, it was MSHA's policy to consider all

but technical violations "significant and substantial". This categorization is the trigger mechanism for increased penalties, and the Act's closure order enforcement provisions. When the Review Commission rejected this policy, it instructed MSHA inspectors to analyze each violation according to the circumstances surrounding them and to use discretion in determining the seriousness of each violation.

About a year after the decision rejecting MSHA's policy, the percentage of "significant and substantial" violations on a nationwide basis dropped to approximately 23%. Today, 64% of all coal violations are categorized as "significant and substantial", and in several MSHA districts the percentages range from 76% to 86% [See Exhibit 1]. This trend of increasing severe enforcement was not precipitated by any evidence of deteriorating safety performance and appears contradictory to the directions of the Review Commission.

Just as troubling is the trend of increasing numbers of "unwarrantable failure" citations and mine closure orders. As you know, this is one of MSHA's most powerful enforcement tools and can result in significantly higher penalties and the interruption of production by the closure of an entire mine or a section of a mine. Yet, MSHA interprets the term "unwarrantable failure" to mean that the operator "should have known" the violation existed (i.e. ordinary negligence). From 1983 to 1985, the number of unwarrantable failure citations and closure orders in coal essentially doubled (2012 v. 3990), and three of 19 local MSHA subdistricts accounted for about one-half of the total.

Again, examples will demonstrate our concern. An unwarrantable failure to comply with a closure order was issued for failure to have an approved reflector on the back of a water car. Another was issued for failure to conduct a six-month examination of a fire extinguisher. Similarly, "unwarrantable failure" citations and orders were issued even though the operator had discovered, and was found to be in the process of abating, a clean-up violation. We do not believe Congress really intended the term "unwarrantable failure" to be used in this fashion. We would hope that when legislation uses language of this strength and clarity, it would not be applied to technical violations and would be reserved for situations that present serious hazards and result from a high degree of negligence.

While coal enforcement severity increased over the last few years, the total number of coal industry violations issued remained relatively stable and the industry was as safe or safer than in the past [See Exhibits 2 and 3].

We do not believe there is any justifiable reason for the growing number of severe enforcement actions taken by MSHA. And, we believe that inappropriate or abusive enforcement is counterproductive to the goals of the Act. Inappropriate and abusive enforcement distracts from necessary, cooperative efforts and results in an improper focus on nonserious problems.

In the 97th Congress, Senator Hatch introduced S. 1423, entitled the "Mine Safety and Health Reform Act of 1981." That bill contained reasonable definitions of the terms "significant

and substantial" and "unwarrantable failure" that we believe are necessary to ensure fair enforcement of the Mine Safety Act by focusing MSHA's more severe enforcement tools on serious hazards.

Senator Hatch's bill also would have reduced the number of mandatory inspections to twice a year for underground mines, and once a year for surface mines. In addition, this provision of the bill would have required inspectors to review the operator's site-specific accident history to determine the principal focus of the inspection, and direct his inspection primarily toward those causes of accidents revealed in such site-specific accident history.

We believe that these amendments and others contained in S. 1423 would have served the purpose of mine safety by creating a more efficient and effective approach for the agency.

Mr. Jackson will present the remainder of our testimony.

Metal and Nonmetal Enforcement

The metal and nonmetal segment of the mining industry has also experienced excessive inspector presence in many safe mines and numerous incidents of abusive and inappropriate MSHA enforcement. But, we are fortunate that these incidents have not been as extensive as those reported by the coal industry. We agree wholeheartedly, however, that significant improvements in the federal mine safety program are essential to achieve the goals of the 1977 Act.

Before the landmark Review Commission decision in 1981, about 90% of all metal/nonmetal violations were categorized as "significant and substantial." About a year after the decision, the number dropped below 20%. Today, approximately 40% of the violations issued to the metal/nonmetal industry are "significant and substantial." While this number is lower than the coal industry statistics, it is, nevertheless, troubling. Also troubling is the fact that the number of metal/nonmetal violations issued in the first half of 1986 (13,795) is almost equal to the total number of violations issued in 1983 (14,746), despite the fact that numerous mines have closed during this period [See Exhibit 2]. Since the industry's safety record continues to improve, we believe there is no justification for the increase in either the severity or the quantity of the violations issued.

Inspector presence at many safe metal and nonmetal mines is excessive and unnecessary. We also have experienced almost full time, permanently assigned inspectors, in part due to the closure of operations without a redistribution of inspector personnel. And, we concur that allegations of the agency's failure to complete mandated inspections, or need for more personnel,* are a distraction from the true issue: the need to focus enforcement resources on high risk locations and on serious hazards.

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* Exhibits 4 and 5 demonstrate that the ratio of the number of miners to inspectors has remained relatively stable.

Regulatory Reform

Since MSHA's creation in 1978, there have been three Assistant Secretaries of Labor for Mine Safety and Health. Each one has acknowledged the need for regulatory reform, including Mr. Zegeer, who is the first Assistant Secretary with a mining background, and is particularly qualified to understand the impact of mine safety standards. The vast majority of the standards in place date back to the 1969 Coal Mine Safety and Health Act, or the 1966 Metal Mine Safety Act. Many of them are technologically outdated, vague, or inappropriate. And, importantly, many of the standards were not intended to be used under the strict enforcement scheme that exists today.

In its Declaration of Policy, the American Mining Congress sets forth the philosophy of its 00 member companies: support for "prompt regulatory and legislative reform that will permit the government to focus its finite resources on true problem areas, and will eliminate unwarranted burdens on industry." We have, and will continue to:

> Provide meaningful contributions to such reform efforts and to encourage standards and product approval requirements that:
>
> - o Recognize differences in mining methods, conditions and processing operations;
> - o Offer flexibility in reducing safety and health risks;
> - o Allow for the introduction of new technology; and
> - o Incorporate clear and concise performance requirements.

Although we have been encouraged by the initiation of the regulatory reform process, we have been extremely disappointed in the pace of MSHA's regulatory activity. For approximately 15 regulatory reform efforts initiated by MSHA since 1980, we have seen only two final rules.

We realize that there are inherent delays in the government's efforts due to the statutory procedures and the various clearance processes that must be followed. Yet, although we believe that MSHA has made progress in streamlining the process, we view the pace of reform as intolerably slow.

While we patiently wait for regulatory reform, technology is stymied, flexibility in achieving safety is prevented, costs unnecessarily escalate, and, most importantly, the cause of safety is ill-served.

An example of the problem is the comprehensive revision of approval standards that manufacturers of underground mining equipment are seeking. Another is the request by mine operators for a formal mine plan approval system. For these and other pending reforms, we urge prompt release of fair and performance-oriented proposed rules so we can move forward with new technology and flexibility that will enhance safety.

On July 26, 1983, the American Mining Congress testified before the Senate Subcommittee on Labor. At that time, the Chairman of AMC reported on the decline and the depressed state of the mining industry. For many segments of our industry, the situation has worsened.

	PRIMARY PRODUCTION (000 MT)		APPARENT CONSUMPTION[1] (000 MT)		EMPLOYMENT	
	1979	1985	1979	1985	1979	1985
ALUMINUM	4,556	3,500	5,341	4,883	23,000	19,000
COPPER	1,515	1,125	2,339	2,166	41,000	15,900
LEAD	578	489	1,256	1,148	5,500	3,000
MOLYBDENUM	65.3	48.5	33.4	14.1	4,800	2,300
ZINC	472	225	929	960	9,000	4,500
STEEL	123,651	80,740	121,564	97,705	735,000[2]	262,800[2]
TOTAL	**130,837**	**86,128**	**131,462**	**106,876**	**818,300**	**307,500**

1/ Apparent consumption equals U.S. production, plus imports, minus exports and adjustments for inventory changes

2/ Includes employment in iron ore mining

Source: U.S. Bureau of Mines Mineral Production Summaries

It is the policy of the United States, as declared by the National Materials and Minerals Policy, Research and Development Act of 1980, to encourage private enterprise to develop a stable and economically sound domestic mining industry. The full implementation of this policy is necessary to assure the prosperity and survival of the industry and our nation.

The achievement of our safety and health goals can be consistent with our national policy to maintain a viable mining industry, if we improve the effectiveness and efficiency of the federal program. We will continue to make every effort to

increase cooperation and resolve the issues that we have discussed today.

For example, with MSHA's assistance AMC is currently sponsoring a series of regional seminars to address enforcement policy and produce what we hope will be a better understanding of the mine safety laws. Along with employee representatives, AMC recently participated in an MSHA training program for its senior management officials that we hope contributed to improved communications and cooperation.

The member companies of AMC are proud of our training programs and the technical sessions that AMC offers industry personnel at our yearly conventions and conferences. And, we believe that they assist in promoting mine safety through the sharing of important information. We are also proud of AMC's cosponsorship with MSHA of the Sentinels of Safety Award Program that recognizes outstanding safety achievements and serves as a model for the entire industry.

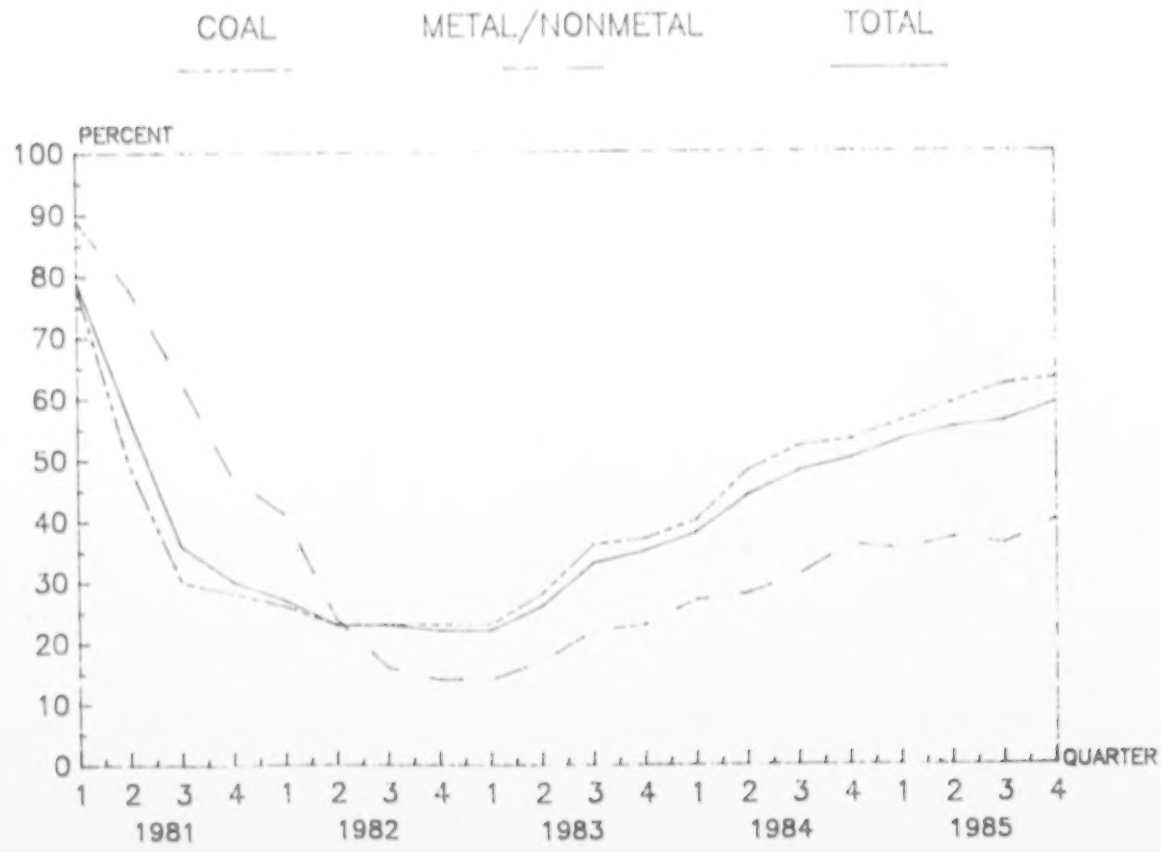
We intend to continue our efforts and hopefully expand and improve them. However, legislative and administrative initiatives are essential to change the course of the federal mine safety program.

As we stated when we testified in 1983: "It is ironic that the most common complaint from industry professionals is that their energies have been diverted from real safety and health concerns." With the agency's overemphasis on enforcement, excessive presence in safe mines, and in many cases abusive

enforcement, cooperation has been hindered and a misallocation of resources has occurred. We look forward to working with this Committee to reform the federal mine safety program.

Thank you again for the opportunity to present our views.

S&S VIOLATIONS ASSESSED (PERCENT)



Source: MSHA Report -- "Updated Summary Information on the Status of the Assessment Program." July 23, 1986.

Exhibit 1

RESPONSE TO QUESTIONS

1. Q. Based on the testimony presented at the hearing and your experience in the mining industry, what is your opinion of the allegations of under-reporting?

A. MSHA's injury reporting requirements as promulgated in Part 50 (30CFR) are extensive and detailed. If "under-reporting" is an issue (as the GAO testimony indicates their audit "did not constitute a valid sample of the industry") I believe the vast majority of incidents are the result of confusion with the standards and their interpretation. For the most part, "under-reporting" can be attributed to interpretation of the standards, not intentional avoidance of reporting requirements.

Much of the confusion and misinterpretation can be attributed to the fact that 30CFR, Part 50 was promulgated by MSHA without the opportunity for public input. The standards and their interpretations have been developed by MSHA as they perceived their needs. This unilateral action has simply led to confusion.

2. Q. The number of inspectors employed by the Mine Safety and Health Administration (MSHA) has been at issue in recent months. Do you think that MSHA has enough inspectors, or do they need more?

A. MSHA does not need more inspectors to fulfill their obligations under the act. As exemplified in our testimony, MSHA needs to reallocate its existing resources to provide appropriate inspection coverage. We have given numerous examples of excessive inspector presence in relatively safe operations. While the industry as a whole has undergone significant reductions in operations (primarily in the metal and nonmetal sector) MSHA realignment does not appear to reflect those changes.

3. Q. Do you agree with the report of the General Accountino Office at the hearing that MSHA is too decentralized?

A. It is my opinion that centralization verses decentralization of MSHA is not an issue. Our problems relating to the perceived problem of decentralization of MSHA pertain primarily to the frequent lack of uniform enforcement and interpretation of standards. However, uniform enforcement varies not only from district to district, but even within districts. More effective uniformity of management is needed, not necessarily centralization of management. In the metal and nonmetal sector this situation, ie: lack of uniform enforcement, has been improving.

4. Q. During the hearing there was much debate over the standards promulgated by MSHA. Do you agree with the contention that these rules are weighted in favor of the industry and are not as effective as they might be?

A. Despite the misdirected debate, the rule making process encourages all interested parties to provide input based on experience and expertise, not emotional reactions. As stated in our testimony the American Mining Congress and its member companies have been very active in the rule making process. MSHA is the final arbiter of the issues and their final standards must be based on the strength of the evidence presented. I do not believe the rules favor industry to the detriment of safety, nor do I believe that they are not effective as they might be. In fact, the new rules thus far issued allow technological innovation and flexibility in achieving improved safety.

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N.T. Camicia, Greenwich †
Charles F. Barber, New York †

* Immediate Past Chairman
† Honorary

October 27, 1986

The Honorable Orrin G. Hatch
Chairman
Committee on Labor and Human
Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

We are pleased to respond to the following questions posed to us by Senator Metzenbaum via your letter dated October 14, 1986, in conjunction with the recent oversight hearing on mine safety and health.

(1) **"On page three of your testimony, you refer to MSHA's "powerful enforcement tool" of issuing "significant and substantial" violations. How large were the fines for the three violations you describe on page three? How much has actually been paid?"**

We did not collect information relative to the amount of fines assessed or paid for the violations described in our testimony. These examples were collected a number of months ago and forwarded, with others, to the Assistant Secretary for Mine Safety and Health. To protect the companies involved from possible retaliation, all company identifying data were deleted and are not available. However, we note that 30 CFR Part 100 provides for fines up to $10,000. More importantly, we note that Section 104(d) and (e) provisions on mine closure orders are dependent upon MSHA findings of "significant and substantial" violations. As a result, we reiterate the inappropriateness of using MSHA's more serious enforcement tools for these non-serious violations.

(2) **"How often are mine operators assessed more than $20 fines for failure to report accidents or injuries? What is the average amount of fine for this recordkeeping infraction since January 1, 1983? Is that full amount generally paid? To your knowledge, how often since January 1, 1983, have mine operators paid more than $20 in fines for recordkeeping violations? (Please describe specific instances, amounts, dates, etc.)."**

We have neither collected nor analyzed this information. MSHA's Office of Assessments may be able to provide it for you. Further, we do not believe it is relevant to safety since record-keeping violations are technical in nature and have little or no bearing on protecting employees.

The General Accounting Office found that approximately 11% of injuries are not reported. MSHA's estimate was 10%. Either amount is probably attributable to the vague and inappropriate provisions of 30 CFR Part 50.

These regulations were promulgated by the Carter Administration in 1977 without the public hearings requested by industry. As a result, the accident reporting regulations were promulgated without a full opportunity for public review and the resulting regulations are vague, at best. Considering this history, a 90% compliance history with a vague set of regulations appears commendable.

Additionally, we note that the Carter Administration's promulgation of 30 CFR Part 50 included a straightforward statement that these provisions "are not mandatory health or safety standards. . . ." 42 F.R. at 6553, December 30, 1977. As such, we believe that violations of 30 CFR Part 50 may not be subject to any fines under Section 110 of the Mine Safety Act. Instead, the proper remedy for a violation of 30 CFR Part 50 appears to be a citation, without penalty, or an injunction under Section 108(a)(1)(B) of the Act for failure to comply with such a citation.

Finally, we enclose the responses to questions posed to Mr. Patrick Ryan by Senator Kennedy via your letter to him.

We hope this information will assist you and Senator Metzenbaum in your oversight of the Mine Safety and Health Administration. We appreciated the opportunity to testify and we look forward to working with you again. Should you require any additional information, please telephone me at 202/861-2857.

Sincerely,

Henry Chajet
Senior Counsel

Enclosure

Respsonse to Questions From Senator Edward M. Kennedy

(1) Mr. Ryan, are you, as a representative of industry, concerned about the safety of your miners?

Not only are we concerned, we are committed to the protection of our workforce and the elimination of occupational injuries and illnesses.

(2) Did you participate in any way on behalf of the industry in the regulation rewrite process?

Yes. I serve on the American Mining Congress Coal Mine Safety Committee and on the Bituminous Coal Operators' Association Safety Committee. In these capacities I participated in the review of existing regulations, the recommendation of improved regulations and in the preparation of comments on agency preproposal draft changes and proposed rules.

(3) Has it been your experience in the past that new recommendations for new regulations would conform, in most instances, with industry's recommendations?

(4) Were you aware that MSHA had previously commissioned committees of its experts to rewrite the safety regulations?

(5) Were you aware that the product of their efforts were then rewritten by MSHA?

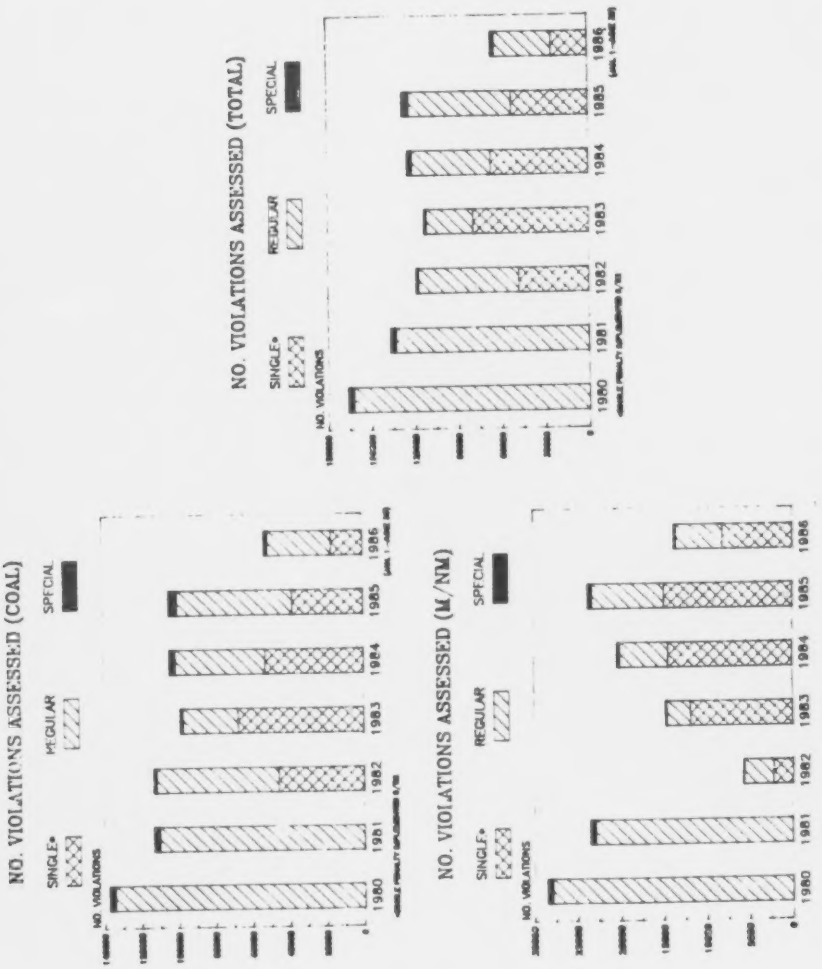
(6) Do you have any comments on the testimony you have heard here today about the regulation rewrites?

These questions can be best answered together. First, they evidence a lack of understanding of the rulemaking process imposed by Congress through the provisions of the 1977 Federal Mine Safety and Health Act. Those provisions are contained in Sections 101 and 508 of the Act.

Section 101 provides for public input on mandatory safety and health standards through a comment period and public hearings. Section 508 provides the Secretary of Labor with authority to promulgate other regulations, with less public input than envisioned by Section 101.

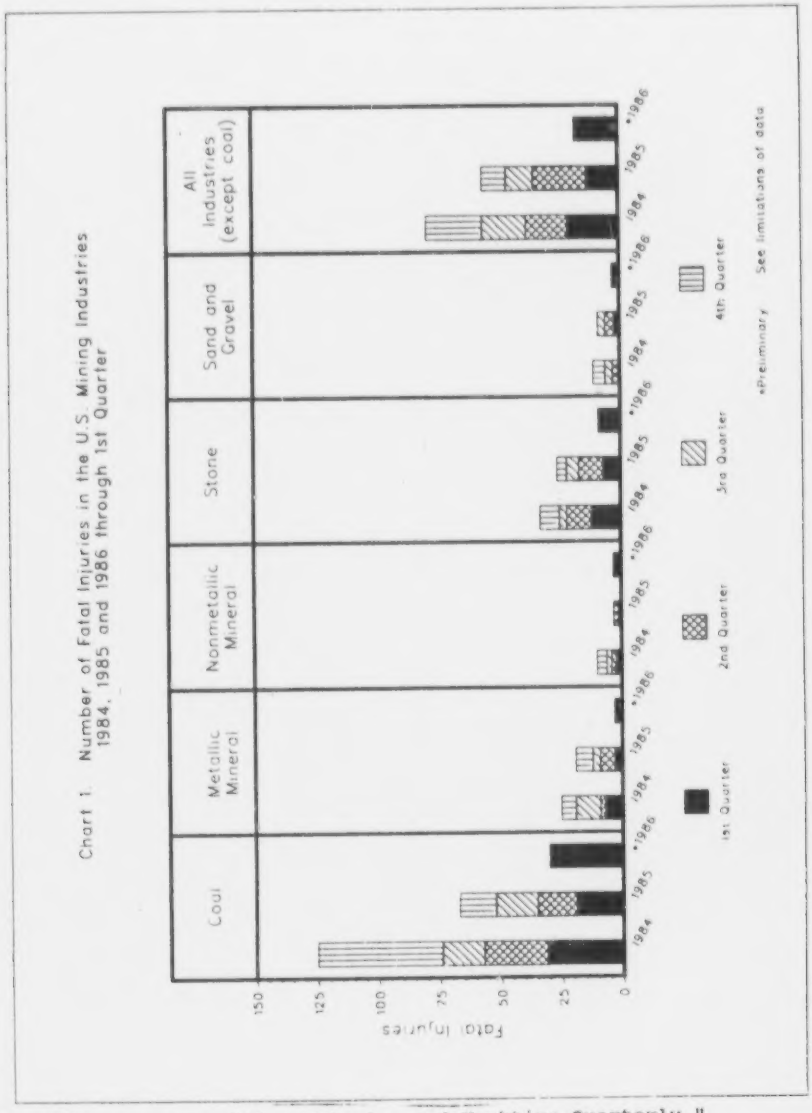
AMC has always supported the public input process. We believe that the vast majority of true mining expertise resides within the industry and that only by allowing that expertise to evaluate and comment upon regulatory proposals can we achieve sound government standards. AMC has also consistently supported expansion of the regulatory process to allow public input at its earliest stages (i.e. the preproposal draft or advance notice of proposed rulemaking), and to allow full cross-examination of witnesses at public hearings to establish the validity of their positions.

Exhibit 2



Source: MSHA Report -- "Updated Summary Information on the Status of the Assessment Program." July 23, 1986.

Exhibit 3



Source: MSHA Report -- "Mine Injuries and Worktime Quarterly," January-December 1986.

AMERICAN MINING CONGRESS
MSHA INSPECTORS AND MINING EMPLOYEES BASED ON MSHA DATA
COAL

	1981	1982	1983	1984	1985
Number of Inspectors	909	830	876	868	786
Number of Workers	249,738	241,454	187,973	193,167	175,938
Number of Employees per Inspector	275	291	215	223	224

Exhibit 4

AMERICAN MINING CONGRESS
MSHA INSPECTORS AND MINING EMPLOYEES BASED ON MSHA DATA
NONCOAL

	1981	1982	1983	1984	1985
Number of Inspectors	517	332	324	320	312
Number of Workers	296,848	230,025	201,960	206,196	191,132
Number of Employees per Inspector	574	693	623	644	613

EXHIBIT 6

To our knowledge, MSHA has always prepared draft regulatory materials through internal and informal task groups composed of agency personnel. The work of these task groups has always been confidential, and we have never been provided with these early draft materials. We were informed that task group work products were merely preliminary materials and not agency positions. In fact, we understand that former Assistant Secretary Ford B. Ford issued a blanket prohibition preventing coal agency task group members from revealing or discussing their work products with outside parties. We believe this prohibition is still in effect.

We have often questioned the "expertise" of MSHA task group members and would greatly appreciate your encouragement of their participation at public hearings so that they could be cross-examined on positions they advance.

Although we have never been privy to the MSHA task group drafts, we certainly hope that MSHA management officials carefully review the materials prior to releasing them for public comment. We would suggest that failure to review the materials and amend them, wherever necessary, would be a disservice to the cause of safety. We certainly expect that Mr. Zegeer and his upper management staff would improve draft regulations, when necessary.

Unfortunately, even though we suspect that these review efforts have been undertaken by MSHA upper management, we still seriously question the correctness of a number of the proposals. The question posed as to whether the new regulatory proposals conform, in most instances, with industry recommendations reveals a lack of review of the regulatory record to date. We would suggest that the Senator's staff review our comments on MSHA's most recent coal regulatory proposals. In one instance, we were so disturbed by the technical quality of these materials that our comments suggested that MSHA terminate the proceeding if major improvements could not be made. We hope, however, that MSHA will make the necessary technical corrections so that the cause of safety will be served by improved regulations.

Finally, we must note our dismay and concern at the apparent, but perhaps well intentioned, misuse of our early regulatory reform initiatives, and MSHA materials as well. While we have not yet analyzed the charts used by Senator Kennedy at the oversight hearing, the Senator placed a copy of our published recommendations on the podium and implied that they were the basis of the "industry recommendation" column in the side-by-side comparison charts. The column marked "Expert Recommendations" seemed to be based on MSHA task group materials (although we cannot be certain since they were never provided to us). And, the column marked "MSHA Revisions" appeared to be preproposal draft or proposed rules issued by the agency.

As to our recommendations, they were prepared prior to the initiation of MSHA reform proceedings in response to Vice President Bush's task group on regulatory reform. We identified selected and important regulations for reform and did not comment

on thousands of other standards. Some current standards that we did not comment on appear to be the basis of the chart's "No Provision" statement in the industry column.

The lack of identification of the standards involved in the charts makes analysis of them extremely difficult. We would appreciate staff informing us of the derivation of each and every standard discussed in the charts so that we may analyze them and respond more fully at a later date.

In closing, we would like to reiterate our commitment to safety and our encouragement of regulatory reform. As we stated in our formal testimony, many of the thousands of standards currently in effect date back to 1969 or prior, and are technologically outdated, vague or inappropriate. We believe that the cause of safety and the economic viability of the mining industry can be enhanced by the expeditious reform of these regulations.

64-831 O—86——7

Mr. BLAKEY. Thank you, Mr. Jackson and thank you, Mr. Ryan. We are going to have questions from the Senators who were present and we will submit them in writing.

Mr. ROLLINS. There is one in addition right now and perhaps you can supply it, otherwise we will do it by writing. You mentioned that the S&S's are the trigger mechanism for a closure order.

Mr. RYAN. Correct.

Mr. ROLLINS. Do you have any data on how many closures have actually taken place in 1980 and then for comparison date 1985 in coal or in metal/nonmetal?

Mr. RYAN. I do not have that readily available, but we can get it and submit it to you.

Mr. ROLLINS. Do you know if it is up or down?

Mr. RYAN. I do not know that.

Mr. ROLLINS. OK.

Mr. RYAN. I do not know the answer to that. We can provide that information.

Mr. ROLLINS. OK, if you could supply that for the record. And one last question. Do you think that we should have disconnecting devices equipped with a padlock and name tag of the mining working on a device to be considered locked out in the mine?

Mr. CHAJET. First of all, I think there are some things that have to be pointed out about the charts, the language on the charts. Where it says "expert recommendations," I am not sure who those experts are, who they were or what——

Mr. ROLLINS. We have heard quite a bit about who they are, but do you think that is a good idea or a bad one?

Mr. CHAJET. We have made recommendations on a number of them, and all of those recommendations are aimed at improving safety and improving flexibility. That particular standard, if you would care to look at the document you have before you, may or may not have been addressed by us.

One thing is clear, that we too have been both satisfied and dissatisfied with the regulatory process. We are encouraged by it and yet we have filed comments in stringent opposition to some of the proposals that have come out. All of those proposals flow from what is called expert technical groups within the agency.

At one point we even suggested that if some of those regulations were not repaired, that they should be totally withdrawn because they were so poorly produced. We do not believe that any implication, industry-orientation or any other implication can be drawn from the charts or from the process, and I think that the process itself is essential.

In 1977, the American Mining Congress requested public hearings on the part 50 rulemaking. Part 50 is the accident reporting issues which were addressed here today. That request was denied, but today we have regulations which result from the lack of public hearings and a lack of public input. We hope that the process that is currently on-going will avoid those confusing kinds of regulations that cannot adequately be address without public input.

Mr. BLAKEY. Again, I think we ought to terminate the hearing at this point. Again, thank you, gentlemen, for your time. Our apologies for the absence of the members of the committee during the latter part of the hearing.

Mr. BLAKEY. The hearing is now adjourned.

[Whereupon, at 4:52 p.m., the committee was adjourned, to reconvene subject to call of the Chair.]

[Additional material supplied for the record follows:]

U.S. Department of Labor

Mine Safety and Health Administration
4015 Wilson Boulevard
Arlington, Virginia 22203

DRAFT

DRAFT

CMS&H Memo No. HQ-86-447-I (6033)

MEMORANDUM FOR DAVID A. ZEGEER

FROM: JERRY L. SPICER
Administrator
for Coal Mine Safety and Health

SUBJECT: Proposed Redelegations of Authority

Pursuant to MMS 3, Paragraphs 925(b) and (m) and 949.4, Coal Mine Safety and Health is requesting your approval to redelegate to the District Managers the authority to evaluate, review and make Secretarial determinations, including execution of affidavits, relating to Section 105(c) complaints of discrimination.

In addition, approval is requested to redelegate to the Coal Mine Safety and Health District Managers the authority to evaluate, review and make recommendations to the Department of Labor's Office of the Solicitor, Division of Mine Safety and Health, Arlington, Virginia, relating to Section 110 civil and criminal investigations.

Attached is a draft of the redelegation which would become effective on October 1, 1986. Any further redelegation of this authority by the District Managers shall not be made without prior approval of the Assistant Secretary.

Approved Date

Disapproved Date

Attachment

DRAFT

DRAFT

DRAFT

FILE COPY

Surname	Date
Socci	8/25/86
Bryant	8/25/86
DR	9/1/86

CMS&H Memo No. HQ-86-450-I (6033)

MEMORANDUM FOR DISTRICT MANAGERS

FROM: JERRY L. SPICER
Administrator
for Coal Mine Safety and Health

SUBJECT: Redelegation of Authority

Pursuant to MMS 3, Paragraphs 925(b) and (m) and 949.4, you are delegated the authority to evaluate, review and make Secretarial determinations, including execution of affidavits, relating to Section 105(c) complaints of discrimination.

You are also delegated the authority to evaluate, review and make recommendations to the Department of Labor's Office of the Solicitor, Division of Mine Safety and Health, Arlington, Virginia, relating to Section 110 civil and criminal investigations.

This redelegation shall become effective on October 1, 1986. No further redelegation of this authority shall be made without prior approval of the Assistant Secretary. If you have any questions, please contact Dennis M. Ryan, Acting Chief, Office of Technical Compliance and Investigation, at (FTS/703) 235-1920.

bcc: J. Spicer
ARF
D. Ryan
M. Yanak
W. Humbert
S. Socci
MSHA Files, Rm. 735, Code 6033
MC:SSOCCI/klo/8/25/86:235-8570

DRAFT

64-831 O—86——8

UMW EXPERT RECOMMENDATIONS	INDUSTRY RECOMMENDATIONS	MSHA REVISIONS
1) Review and revise roof control plan every 6 months	1) No time frame for reviews	1) No time frame for reviews
2)Miner representative participates in discussions and revisions of roof control plans	2) No miner participation	2) No miner participation
3) Physical exmaination of roof conditions by the Secretary every 6 months.	3) No physical examination	3) No physical examination
4) Roof control plan must protect against rock and coal outbursts	4) No protection	4) No protection
5) Forbids conventional support systems as primary means of roof support.	5) Permits conventional support systems.	5) Permits conventional support systems.
6) Requires use of Automated Mobile Roof Support Systems in lieu of breaker timbers for retreat mining.	6) No provision for AMRSS	6) No provision for AMRSS.
7) Forbids open-end pillaring, except in longwall and short-wall mining.	7) Permits open-end pillaring	7) Permits open-end pillaring
8) Requires roof movement detection devices.	8) No provision.	8) No provision.
9) Forbids roof support removal, except to replace hazardous damaged or broken crossbars.	9) Permits roof support removal	9) Permits roof support removal
10) Ventilation levels must be adjusted when methane levels reach 1%.	10) Ventilation adjusted at 1%	10) Ventilation adjusted at 1.5%
11) Bleeder systems must be present in all mines	11) No provision	11) Bleeder systems only in mines where methane is .25% of air.
12) Methane examinations every 20 minutes during operation of mine	12) Methane test determined on mine-to-mine basis.	12) No provision
13) Worked-out areas must be examined by certified persons.	13) Worked-out areas do not need to be examined by certified persons, can use atmospheric monitoringsystem.	13) Worked-out areas must be examined by certified persons.
14) Ventilation plan reviewed every 6 months.	14) No time frame for reviews.	14) Ventilation plan reviewed every six months.
15) Miner participation in discussions and revisions of roof control plan.	15) No miner participation.	15) No miner participation
16) Requires availability of galvanometer for testing blasting circuits.	16) No provision.	16) No provision.
17) Forbids sheathed explosive units	17) Permits sheathed explosives	17) Permits sheathed explosives

EXPERT RECOMMENDATIONS	INDUSTRY RECOMMENDATIONS	MSHA REVISIONS
1) Persons performing troubleshooting and testing shall wear gloves rated for the voltage of the circuit being worked on.	1)No provisions for gloves	1) No provisions for gloves
2) Disconnecting devices must be equipped with a padlock and name tag of miner working on device to be considered locked out.	2) Disconnecting devices which have been mechanically disabled shall be considered locked out.	2) No strict provision for locking and tagging of disconnecting devices.
3) Emergency parking brakes on rubber-tired self-propelled electric equipment shall be activated by the deenergizing device to prevent vehicle from crushing miners.	3) No provision addressing emergency brake activation by deenergizing device.	3) Provisions for adequate braking systems but not the brakes specified by the experts.
4)Requires extensive testing and maintenance of self-propelled and portable electric equipment and provides specific guidelines for tests.	4) Requires cursory examinations of self-propelled and portable electric equipment.	4) Contains examination and testing provisions but provides no guidelines
5)Requires extensive regulation of state-run cable repair and splicing programs.	5) No provision.	5) No provision
6) Grants Secretary authority to revoke splicers' cards for cause.	6) No provision.	6) No provision
7) Requires at least two direct current circuit breakers on parallel connected rectifier trolley systems.	7) No provision.	7) Requires direct current circuit breakers but provides no minimum requirements.
8) Requires interlocking tie-feeder breaker on parallel connected rectifier trolley systems.	8) No provision.	8) No provision
9)Requires miners to wear rubber insulating gloves when handling low, medium, or high voltage trailing cables.	9) No provision.	9) Requires rubber insulating gloves, but only when handling high voltage trailing cables.
10) High voltage trailing cables shall only be repaired by qualified electricians.	10) No provision.	10) Trailing cables shall be repaired by "qualified persons" or persons under their direct supervision.
11) Requires protections against arcing short circuits of trolley wires.	11) No provision.	11) No provision.
12) Prohibits temporary splices of trailing cables.	12) Sanctions temporary splices on trailing cables.	12) Fails to acknowledge temporary splices.
13) Prohibits tape to be used for outer jacket of a splice.	13) Allows temporary taped splices.	13) Fails to acknowledge temporary splices.
14) Requires that repairs on high voltage circuit breakers and distribution equipment be carried out immediately.	14) No provision.	14) Requires that hazards be corrected by the end of a shift.

EXPERT RECOMMENDATIONS

Sec. 75.604-1 TRAILING CABLE SPLICES AND REPAIRS; QUALIFIED ELECTRICIAN.

(a) A LOW-VOLTAGE TRAILING CABLE SHALL BE SPLICED OR REPAIRED ONLY BY A QUALIFIED ELECTRICIAN, BY A PERSON WORKING UNDER THE DIRECT SUPERVISION OF A QUALIFIED ELECTRICIAN, OR BY A PERSON WHO HAS BEEN TRAINED AS PRESCRIBED IN 30 CFR 75.154.

(b) A HIGH-VOLTAGE TRAILING CABLE SHALL BE SPLICED OR REPAIRED ONLY BY A QUALIFIED ELECTRICIAN AS PROVIDED IN 30 CFR 75.153(c)(2).

MSHA Draft of Revisions

Sec. 75.606 Persons who splice trailing cables.

(a) Splices of high-voltage trailing cables shall be made by qualified persons or persons under their supervision.

(b) Splices of low-voltage trailing cables shall be made by qualified persons or persons under their supervision or persons trained in cable splicing and repair.

(c) Mine operators shall maintain a list of persons who are trained to splice and repair low-voltage trailing cables.

American Mining Congress Proposals

No provision.

KEY DIFFERENCES:

- Low voltage trailing cables: requirement of "direct supervision" in expert recommendations vs. plain supervision in MSHA proposals.
- High-voltage trailing cables: Experts only allow qualified electricians to do work where MSHA allows unqualified but supervised workers to splice trailing cables.

EXPERT RECOMMENDATIONS

Sec. 75.154 Low-voltage Trailing Cable Repair and Splicing Training Programs.

(a) Coal Mine low-voltage trailing cable repair and splicing training programs shall be approved by the Distribt Manager of the coal mine safety and health district in which the training is to be conducted, except that the state shall approve cable repair and splicing training programs in states that have an electrical qualification program approved by the administrator for coal mine safety and health shich contain provisions to approve coal mine low-voltage training cable repair and splicing training programs.

(b) An applicant seeking acceptance as a low-voltage trailing cable repair and splicer shall have a minimum of 1 year's experience working on a working section of an underground coal mine.

(c) Cable repair and splicing programs shall consist of a minimum of 24 hours classroom and laboratory training in the following:

(1) The effect of electric current on the human body.
(2) Treatment of electrical shock.
(3) Identification of circuit breakers and trailing cable disconnecting devices.
(4) Requirements of 30 CFR 75.506 and Subpart G.
(5) Grounding of mobile equipment.
(6) Types, purpose and use of circuit breakers and fuses.
(7) Types W, G, GGC, Round, Flat, and Shielded cable construction.

MSHA Draft of Revisions

Sec. 75.154 Qualified Cable Splicer.

(a) In states which have electrical qualification programs, a qualified cable splicer is an individual who satisfactorily completes the requirements of the state program.

(b) In states which have no electrical qualification program, a qualified cable splicer is an individual who successfully completes an MSHA training and demonstration program.

American Mining Congress Proposals

No provisions.

EXPERT RECOMMENDATIONS

(8) Types, purpose and use of ground check devices.
(9) Types and methods of installation of connecting sleeves.
(10) Types and installation of insulating materials.
(11) Methods of sealing to exclude moisture in outer jackets.
(12) Purpose and use of grounded phase circuits.
(13) Effects of phase reversal in cable.
(14) Preparation of cable for splicing and staggering of conductors.
(15) Repair of damaged insulation and outer jackets.
(16) Maximum length of trailing cables for permissible equipment.

(d) The instructor shall be a qualified electrician.

(e) The district manager of the coal mine safety and health district in which the training is to be conducted shall be notified at least 20 days in advance of the date of the training session. The Secretary shall have the option of having an authorized representative monitor the training.

(f) The program shall include a practical demonstration of the applicant's ability to:

(1) Perform all required safety precautions in splicing trailing cables.
(2) Properly splice a round, three conductor, GGC, No. 2 trailing cable.
(3) Properly repair a damaged outer jacket.
(4) Demonstrate proper methods of splicing metallic shielding.

MSHA Draft of Revisions

American Mining Congress Proposals

EXPERT RECOMMENDATIONS

The practical demonstrations of ability required by this section shall be monitored by a representative of the Secretary who is a qualified electrician or, in states that have an approved electrical qualification program, a representative of the state who is a qualified electrician.

(g) The instructor shall prepare a list of those persons who successfully satisfy the requirements to repair and splice low-voltage trailing cables. The list shall be certified by the instructor and the representative of the Secretary or the representative of the state who monitored the demonstrations of ability and shall be forwarded to the district manager of the coal mine safety and health district in which the training was conducted.

Each person who successfully completes the training shall be issued a card from MSHA indicating that the person is trained to repair and splice low-voltage trailing cables. The Secretary may revoke any card for cause including making repairs in trailing cables in violation of the requirements of this part 75 or defeating any safety device or circuit.

MSHA Draft of Revisions

KEY DIFFERENCES:

- o Lack of explicit guidelines for classroom and laboratory training in MSHA guidelines.
- o Absence of practical demonstration requirement for splicers.
- o No authority granted to Secretary to revoke a splicers card for cause.

American Mining Congress Proposals

EXPERT RECOMMENDATIONS

Sec. 75.509-1 Self-Propelled and Portable Electric Equipment; Examination and testing; (Formerly Sec. 75.512)

(a) All self-propelled and portable electric equipment and circuits suppiying such equipment shall be examined and tested at intervals not exceeding 7 calendar days. The required examinations and tests shall include, but not be limited to, the following:

(1) A test of continuity of grounding conductors in trailing cables.
(2) An examination of splices and outer jackets of trailing cables.
(3) Functional test of ground check, ground fault circuits and under-voltage protection (6 months after the effective date of this section).
(4) Examination and tests of all components of permissible equipment to assure compliance with applicable requirements of part 18.
(5) Functional test of steering system.
(6) Functional test of deenergization device.
(7) Functional test of rubber-tired Haulage equipment braking system to ascertain that the braking system will stop and hold its maximum load on the steepest grade on which the machine is operated.
(8) Functional test of braking system on rail-mounted self-propelled equipment.
(9) Functional test and calibration of methane monitor by application of a known methane air mixture.
(10) Examination and functional test of lights.
(11) Visual examination for accumulation of loose coal, coal dust, oil, grease, or other combustible materials.

MSHA Draft of Revisions

Sec. 75.504 Testing and examination of self-propelled and portable electric equipment.

A qualified person shall examine and test all self-propelled and portable electric equipment at least once every seven days in which the equipment is used; certify, by initial and date, that tests and examinations were performed. Hazards shall be corrected or recorded if not corrected by the end of the shift.

American Mining Congress Proposals

The examinations and tests required by 75.512 shall be made at least weekly for portable and mobile face equipment and mobile face equipment and every six months for other electrical equipment.

Sec. 75.512-3 Nature of examinations and tests.

The examination and test required by 75.512 shall consist of a visual inspection for physical damage, and testing to assure that the equipment is functional and that all test circuits indicate proper operation. Proper maintenance of nonpermissible equipment shall mean that all hazardous defects are corrected.

EXPERT RECOMMENDATIONS

(12) Functional test of all controls.
(13) Examination of wiring and controllers of rail-mounted equipment.
(14) Functional test of diode grounding circuits.

Tests No. 5, 7, 8, and 12 need not be performed by a qualified electrician but must be witnessed by the qualified electrician whose name is recorded in the record as required by Sec. 75.509-1(b).

(b) Each item of self-propelled and portable electric equipment shall be listed separately in a book provided for that purpose. The record shall contain the date of examination, name of the qualified electrician conducting the examination, any unsafe conditions found and corrective action taken. The record shall be read and signed by the official responsible for maintaining the electric equipment in safe operating condition.

MSHA Draft of Revisions

KEY DIFFERENCES:

- o Lack of specific guidelines for examination in MSHA revisions.
- o Failure to include language saying that hazards will be immediately removed in MSHA revisions.

American Mining Congress Proposals

EXPERT RECOMMENDATIONS

Sec. 75.506 Disconnecting Devices; Lockout and Tagging Procedures

(a) Except as provided in 30 CFR 75.507 (a) and (b), prior to commencing electrical work, the person who is to perform electrical work shall open the disconnecting device, tag and lock out the disconnecting device, and keep the key on his person while the electrical work is being performed. The tags shall bear the name of the person who opened the disconnecting device. Locks and tags shall be removed only by the person who installed them or, if such person is unavailable, by a person designated by the official responsible for maintenance of the circuits and equipment.

(b)No electrical work shall be performed on any high voltage circuit or equipment until all circuits are de-energized and grounded to the grounding conductor and the disconnecting device is opened and locked out and properly tagged by a qualified electrician as provided in 30 CFR 75.153(c)(2).

(c) No electrical work shall be performed on low-voltage circuits or equipment that are located in compartments that also contain energized high-voltage circuits and equipment until the incoming high-voltage circuits have been disconnected, locked out, and tagged in accordance with 30 CFR 75.506(a).

(d) Disconnecting devices used to disconnect power for the purpose of performing electrical work on circuits and equipment shall be equipped with a locking device or provisions for installing a padlock that requires its own unique and individual key so that its locking device or padlock cannot be unlocked without the knowledge and consent of the person performing the work.

MSHA Draft of Revisions

Sec 75. 503 Work on Electric Circuits and equipment

(a) Except when necessary for troubleshooting and testing of low-voltage circuits and equipment, electric circuits shall be de-energized, locked out and tagged out before electrical work is started.

(b) Before troubleshooting and testing a low-voltage circuit contained in a compartment with a high-voltage ciruit, the high voltage circuit shall be de-energized, locked out, and tagged, or isolated from the low voltage circuit.

(c) High voltage lines on the surface shall be de-energized and grounded before work is done on them, except that repairs may be permitted in the case of energized surface high-voltage lines if such repairs are made by a person trained to perform this type of work.

American Mining Congress Proposals

Sec. 75.511--No change.

Sec. 75.511-1 Mechanically disabled disconnecting devices.

Disconnecting devices which have been mechanically disabled shall be considered to be locked out.

Sec. 75.511-2 Availability of qualified persn

A qualified person who has mechanically disabled and tagged a disconnecting device shall not be considered to be "unavailable" within the meaning of that term in Sec. 75.511 provided he is in direct communication with another person who is qualified and available to remove the disabling device and tag from the disconnecting device.

EXPERT RECOMMENDATIONS

Sec. 75.507 Troubleshooting and Testing

(a) Electric circuits and equipment may remain energized when necessary for electrical troubleshooting and testing for the purpose of determining voltage and current values. Troubleshooting and testing of energized circuits and equipment shall only be done by a qualified electrician or by a person under the direct supervision of a qualified electrician, who shall be physically present and within sight while troubleshooting and testing are being performed. Persons performing troubleshooting and testing shall wear gloves rated at least for the nominal voltage of the circuit when performing such work.

(b) Troubleshooting and testing of energized low-voltage circuits that are located in compartments that also contain energized high-voltage circuits shall not be performed unless the high-voltage ciruits have either been disconnected or the low-voltage circuits are isolated by a partition and cover from the high-voltage circuits.

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KEY DIFFERENCES:

- o Gloves--No Gloves
- o Strong lock and key provision vs. No lock and key provision
- o Tough definition of "Availability" vs. Weak definition of "availability"

American Mining Congress Proposals

EXPERT RECOMMENDATIONS

Sec. 75.523-2 Deenergization devises; Installation; Performance. (formerly Sec. 75.523, 75.523-1, and 75.523-2)

(a) All Rubber-tired and crawler-mounted, self-propelled electric equipment which is used in the active workings of each underground mine shall be provided with a device that will quickly deenergize the tramming motors of the equipment in the event of an emergency. In addition, the device shall activate the emergency parking brake on rubber-tired self-propelled electric equipment.

(b) An operator may apply to the Chief of the Approval and Certification Center, Mine Safety and Health Administration, Box 251, Triadelphia, West Virginia 26059 for approval of the installation of devices to be used in lieu of devices that will quickly deenergize the tramming motors and will activate the emergency parking brake provided in 30 CFR 75.523 in the event of an emergency. The Chief of the Approval and Certification Center may accept such devices if it is determined that the performance thereof will be no less effective than that required by paragrapns (c) and (d).

(c) Deenergization of the tramming motors and activation of the emergency parking brake of self-propelled electric equipment shall be provided by the Actuation of a bar which shall extend a sufficient distance in each direction to permit quick deenergization of the tramming motors of self-propelled electric equipment from all locations from which the equipment can be operated.

MSHA Draft of Revisions

Sec. 75.516 Braking system for rubber tired self-propelled electric equipment.

(a) Rubber-tired self-propelled electric equipment shall be provided with --

(1) A service brake system capable of stopping and holding the fully loaded equipment at any location when the brakes are applied; and

(2) A parking brake system capble of holding the fully loaded equipment in a stationary position at any location when the brakes are applied, unless the driving mechanism prevents accidental movement of the equipment when parked.

(b) When equipment is parked on a grade, the parking brake shall be applied upon leaving the controls and the wheels of the equipment shall be blocked when the parking brake system uses trapped hydraulic or pneumatic pressure.

American Mining Congress Proposals

No provisions.

EXPERT RECOMMENDATIONS	MSHA Draft of Revisions	American Mining Congress Proposals
(d) Movement of not more than 2 inches of the actuating bar resulting from the application of not more than 15 pounds of force upon contact with any portion of the equipment operator's body at any point along the length of the actuating bar shall cause deenergization of the tramming motors and activation of the emergency parking brake.		
(e) When the equipment is trammed from a location other than the operator compartment, the actuating bar shall be installed in such a manner so that the actuating bar is between the operator and the machine at all times the machine is being trammed.		
	KEY DIFFERENCES:	
	o Expert recommendations provide for a specific type of braking system vs. more general guidelines for brakes from MSHA. (Bad brakes have resulted in a number of fatalities where miners were crushed by rubber-tired self-propelled electrical equipment.)	

EXPERT RECOMMENDATIONS

Sec. 75.604 TRAILING CABLES: SPLICES AND REPAIRS. (Formerly Subsec. 75.514, 75.517, 75.603, 75.604, 75.804(b), 75.810, and 75.906)

(a) EACH SPLICE IN A TRAILING CABLE SHALL COMPLY WITH THE FOLLOWING

(1) EACH TRAILING CABLE SPLICE SHALL PROVIDE ELECTRICAL CONTINUITY OF ALL CABLE COMPONENTS.

(2) EACH SEVERED CONDUCTOR SHALL BE INDIVIDUALLY WELDED OR JOINED BY A COMPRESSION-TYPE SPLICING CONNECTOR.

(3) SEVERED CONDUCTORS SHALL NOT BE JOINED BY TYING THE CONDUCTORS IN KNOTS.

(4) EACH POWER CONDUCTOR AND GROUND CHECK CONDUCTOR SHALL BE INDIVIDUALLY REINSULATED TO AT LEAST THE SAME THICKNESS AND DIELECTRIC STRENTH AS THE ORIGINAL INSULATION.

(5) METALLIC SHIELDING SHALL BE REPLACED OVER EACH POWER CONDUCTOR OR CONDUCTOR ASSEMBLY AS APPLICABLE.

(6) THE OUTER JACKET OF A SPLICE SHALL BE VULCANIZED, MOLDED OR OTHERWISE FUSED TO THE CABLE JACKET SO AS TO EXCLUDE MOISTURE.

(7) THE OUTER JACKET OF A SPLICE SHALL BE AT LEAST EQUAL TO THE ORIGINAL CABLE JACKET IN THICKNESS.

(8) THE OUTER JACKET OF A SPLICE SHALL NOT BE MADE WITH TAPE; HOWEVER, ELECTRICAL TAPE MAY BE USED FOR PROTECTION OF THE SPLICE ENDS AGAINST LIPPING.

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Sec. 75.605 Splices of trailing cables.

Trailing cable splices shall have flame resistant outer jackets which prevent moisture from entering the cable.

American Mining Congress Proposals

Sec. 75.604-1 Permanent splices; bonding material.

As the bonding material of permanent splices becomes loose or frayed, such splices shall be rebonded with materials equivalent to the existing bonding.

KEY DIFFERENCES:

(1) Prohibition of tempary splices vs. failure to acknowledge temporary splices in MSHA proposals.

(2) Prohibiting tape to be used for the outer jacket of a splice vs. failure to address taped splices by MSHA. (Industry proposals, however, are specifically created to allow temporary taped splices because making proper splices takes more time).

EXPERT RECOMMENDATIONS

(b) EACH REPAIR OF A TRAILING CABLE SHALL COMPLY WITH THE FOLLOWING:

(1) EACH POWER CONDUCTOR AND GROUND CHECK CONDUCTOR THAT HAS BEEN DAMAGED SHALL BE INDIVIDUALLY REINSULATED TO AT LEAST THE SAME THICKNESS AND DIELECTRIC STRENGTH AS THE ORIGINAL INSULATION.

(2) THE OUTER JACKET OF A REPAIR TO A TRAILING CABLE SHALL BE VULCANIZED, MOLDED OR OTHERWISE FUSED TO THE CABLE JACKET SO AS TO EXCLUDE MOISTURE.

(3) THE OUTER JACKET OF A REPAIR TO A TRAILING CABLE SHALL BE AT LEAST EQUAL TO THE ORIGINAL CABLE JACKET IN THICKNESS.

(c) MATERIAL USED FOR THE OUTER JACKET OF A SPLICE OR REPAIR SHALL BE FLAME RESISTANT AS PRESCRIBED IN 30 CFR 18.64 AND AS INDICATED BY A MSHA ACCEPTANCE MARKING ON THE JACKET MATERIAL.

MSHA Draft of Revisions

American Mining Congress Proposals

EXPERT RECOMMENDATIONS

Sec. 75.1001 Overcurrent protection.

Trolley wires and trolley feeder wires shall be provided with over-current protection ** EITHER BY CIRCUIT BREAKERS OR FUSES WHERE ALLOWED BY 30 CFR 75.1001-2. THESE DEVICES SHALL DEENERGIZE THE AFFECTED CIRCUIT UPON OCCURRENCE OF AN ARCING SHORT CIRCUIT AT ANY POINT IN THE SYSTEM. THE ARCING SHORT-CIRCUIT CURRENTS SHALL BE DETERMINED AT FREQUENT INTERVALS AS SPECIFIED IN 30 CFR 75.1006(a).

MSHA Draft of Revisions

Sec. 75.1005 Circuit protection.

Trolley wires and trolley-feeder wires shall be protected against short circuits and overcurrents by direct-current circuit breakers.

(a) Two direct-current tie-feeder circuit breakers shall be used at each parallel-connected rectifier.

(b) Each tie-feeder circuit breaker located at a parallel-connected rectifier shall automatically open when the recitifier bridge loses its source of power or when any main circuit breaker located between the tie-feeder breaker and the rectifier opens.

American Mining Congress Pro

No provision.

KEY DIFFERENCES:

- o No provision for protectio arcing short circuit in in and MSHA recommendations v Provision to deenergize ar short circuits immediately expert recommedations.

EXPERT RECOMMENDATIONS

Sec. 75.608 USE OF RUBBER INSULATING GLOVES.

(a) ON OR AFTER (6 MONTHS FROM EFFECTIVE DATE), RUBBER INSULATING GLOVES AND LEATHER GLOVE PROTECTORS SHALL BE WORN BY EACH MINER WHO HANDLES AN UNSHIELDED TRAILING CABLE ENERGIZED AT MORE THAN 150 VOLTS TO GROUND, NOMINAL.

(b) RUBBER INSULATING GLOVES SHALL BE RATED FOR NOT LESS THAN 1000 VOLTS.

(c) RUBBER INSULATING GLOVES SHALL NOT BE WORN OR STORED INSIDE OUT.

(d) RUBBER INSULATING GLOVES AND LEATHER GLOVE PROTECTORS SHALL BE STOKED IN A WOODEN OR METAL CONTAINER WHEN NOT IN USE.

(e) RUBBER INSULATING GLOVES SHALL BE EXAMINED BEFORE EACH PERIOD OF USE.

(f) RUBBER INSULATING GLOVES AND LEATHER GLOVE PROTECTORS WITH ANY VISIBLE SIGN OF DAMAGE OR DEFECT SHALL NOT BE USED.

MSHA Draft of Revisions

Sec. 75.610 Use of rubber insulating gloves.

Insulating gloves, which are rated for at least the voltage of the system, shall be worn when handling energized high-voltage trailing cables.

American Mining Congress Proposals

No provisions.

KEY DIFFERENCES:

- MSHA provision only requires wearing of rubber gloves when handling high voltage trailing cables vs. Expert recommendations asking for miners to wear gloves even when handling low or medium voltage cable. (Experts recognize that miners crawl through mud and water continuously and, therefore, should not be permitted to pick up "hot" cable without gloves on.)

EXPERT RECOMMENDATIONS

Sec. 75.801 Disconnecting devices. (Formerly Subsec. 75.511, 75.808, and 75.809)

(a) A disconnecting DEVICE shall be installed IN CONJUNCTION WITH EACH HIGH-VOLTAGE CIRCUIT BREAKER AND at the beginning of each HIGH-VOLTAGE branch line*.* THE DISCONNECTING DEVICE SHALL BE designed ** TO PROVIDE visual ** EVIDENCE that ** ALL UNGROUNDED POWER CONDUCTORS OF the circuit ** ARE DISCONNECTED WHEN THE DISCONNECTING DEVICE is open.

(b) EACH HIGH-VOLTAGE DISCONNECTING DEVICE SHALL BE LEGIBLY MARKED TO INDICATE THE SPECIFIC UNIT OF EQUIPMENT OR CIRCUIT THAT IT SUPPLIES. WHERE A PLUG AND RECEPTACLE ARE USED AS A DISCONNECTING DEVICE, BOTH THE PLUG AND RECEPTACLE SHALL HAVE IDENTICAL MARKINGS.

(c) EACH HIGH-VOLTAGE DISCONNECTING DEVICE INSTALLED UNDERGROUND SHALL BE EQUIPPED WITH A LOCKING DEVICE OR PROVISIONS FOR INSTALLING A PADLOCK.

MSHA Draft of Revisions

Sec. 75.801 Disconnecting devices for high-voltage circuits, other than trailing cables.

(a) Disconnecting devices which provide visible evidence that power conductors are disconnected when the devices are opened shall be installed at the beginning of each branch line.

(b) Disconnecting devices having exposed energized parts and operated only by qualified persons or persons under their supervision.

American Mining Congress Proposals

(c) (*) A disconnecting device shall be located on the surface where high-voltage circuits enter the underground portion of the mine. The disconnecting device shall be installed and so equipped or designed in such a manner that it can be determined by visual observation that the power has been disconnected (*).

KEY DIFFERENCES:

- No provision for legible markings on disconnecting devices in MSHA and industry recommendations vs. position for legible markings in expert recommendations.
- No provision for locking device on high-voltage disconnecting devices in MSHA and industry recommendations vs. provision for locking device in expert recommednations.

EXPERT RECOMMENDATIONS

Sec. 75.1001-1* CIRCUIT BREAKERS; REQUIREMENTS.

(a)(1) RADIAL STUB-FEED TROLLEY SYSTEMS SHALL BE PROTECTED BY:

(i) A DIRECT-CURRENT CIRCUIT BREAKER CONNECTED IN SERIES WITH THE UNGROUNDED OUTPUT CONDUCTOR OF EACH RECTIFIER. EACH CIRCUIT BREAKER SHALL HAVE A CONTINUOUS CURRENT RATING WHICH IS NOT LESS THAN 120 PERCENT OF THE CONTINUOUS FULL-LOAD CURRENT RATING OF THE RECTIFIER; OR

(ii) A MOLDED-CASE BREAKER CONNECTED IN SERIES WITH EACH UNGROUNDED ALTERATING-CURRENT CONDUCTOR SUPPLYING POWER TO THE RECTIFIER BRIDGE. EACH CIRCUIT BREAKER SHALL HAVE A CONTINUOUS CURRENT RATING WHICH IS NOT LESS THAN THE CONTINOUS FULL-LOAD CURRENT RATING OF THE RECTIFIER.

(2) PARALLEL-CONNECTED RECTIFIER TROLLEY SYSTEMS SHALL BE PROTECTED BY AT LEAST TWO DIRECT-CURRENT CIRCUIT BREAKERS CONNECTED IN SERIES WITH THE UNGROUNDED OUTPUT CONDUCTOR OF EACH RECTIFIER. THE CIRCUIT BREAKERS SHALL BE INSTALLED AS TIE-FEEDER CIRCUIT BREAKERS BETWEEN THE RECTIFIER AND ADJACENT RECTIFIERS. EACH CIRCUIT BREAKER SHALL HAVE A CONTINUOUS CURRENT RATING WHICH IS NOT LESS THAN 120 PERCENT OF THE CONTINUOUS FULL-LOAD CURRENT RATING OF THE RECTIFIER. TIE-FEEDER BREAKERS LOCATED AT A PARALLEL-CONNECTED RECTIFIER SHALL BE INTERLOCKED SO THAT THE CIRCUIT BREAKERS OPEN WHEN THE RECTIFIER BRIDGE LOSES ITS ALTERNATING-CURRENT SOURCE OF POWER OR WHEN ANY MAIN CIRCUIT BREAKER LOCATED BETWEEN THE TIE-FEEDER CIRCUIT BREAKERS AND THE RECTIFIER OPENS.

MSHA Draft of Revisions

Sec. 75.1006 Circuit breakers.

(a) Direct-current circuit breakers shall have interrupting capacities that adequately protect against undervoltage, short circuits, overcurrents and ground faults.

(b) Direct-current circuit breakers installed at rectifiers shall have continuous current ratings not less than 120 percent of the continuous full-load direct-current ratings of the rectifiers.

(c) Alternating-current circuit breakers installed at rectifiers shall have an interrupting current rating not less than 20 times the continuous full-load current ratings of the rectifiers.

(d) Alternating-current circuit breakers installed in the supply conductors to the rectifier bridge shall have continuous current ratings not less than the continuous full-load direct-current rating of the rectifiers.

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No provision.

KEY DIFFERENCES:

- No provision for "at least two direct-current circuit breakers" on parallel-connected rectifier trolley systems in MSHA recommednation vs. strong provision for "at least two direct-current circuit breakers" in expert recommednations.
- No provision to interlock tie-feeder breaker on parallel-connected rectifier in MSHA recommendation vs. strong provision to interlock tie-feeder breakers in expert recommendations.

BITUMINOUS COAL OPERATORS' ASSOCIATION, INC.
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September 25, 1986

The Honorable Orrin G. Hatch
Chairman
Committee on Labor and Human Resources
428 Senate Dirksen Office Building
Washington, D. C. 20510

Dear Senator Hatch:

Attached is a statement by the Bituminous Coal Operators' Association, Inc. which we request be inserted in the Record of the MSHA Oversight Hearing to be held on Thursday, September 25, 1986.

We appreciate very much the opportunity to submit this testimony, and we hope it will be constructive to your committee in its oversight responsibilities of MSHA.

Sincerely,

Joseph P. Brennan

Joseph P. Brennan
President

Attachment
Testimony

STATEMENT OF THE

BITUMINOUS COAL OPERATORS' ASSOCIATION, INC.

BEFORE THE

SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES

SEPTEMBER 25, 1986

BCOA APPRECIATES THE OPPORTUNITY TO PRESENT THIS STATEMENT ON BEHALF OF OUR MEMBERSHIP. BCOA IS A TRADE ASSOCIATION WHICH REPRESENTS COAL COMPANIES PRODUCING IN EXCESS OF 70% OF THE PRODUCTION UNDER THE NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1984. OUR PRINCIPAL MISSION IS TO REPRESENT OUR MEMBERSHIP IN MATTERS DEALING WITH LABOR RELATIONS, INCLUDING CONTRACT NEGOTIATIONS, HEALTH AND SAFETY, PENSION FUND AND HEALTH MATTERS AND TRAINING, AMONG OTHERS. WE DO NOT AS A RULE APPEAR BEFORE CONGRESSIONAL COMMITTEES EXCEPT AS OUR PARTICULAR EXPERTISE IS NEEDED, BUT WE DO FEEL THAT THE NATURE OF THIS HEARING AND THE IMPLICATIONS IT HAS FOR THE MEMBERS OF BCOA JUSTIFY OUR COMMENTS.

WE HAVE ASKED TO SUBMIT WRITTEN TESTIMONY RATHER THAN TO PRESENT OUR STATEMENT IN PERSON. WE HAVE DONE SO BECAUSE WE DO NOT BELIEVE THAT THE PRESENT HEARING, PARTICULARLY WITH THE TIME CONSTRAINTS INVOLVED, LENDS ITSELF TO A PROPER OVERSIGHT OF THE SIGNIFICANT ISSUES OF HEALTH AND SAFETY IN THE COAL MINES.

AT THE OUTSET, WE WOULD LIKE TO STRESS THE COMMITMENT OF BCOA AND ITS MEMBER COMPANIES TO THE SAFETY IMPERATIVE. OUR RECORD IS A GOOD ONE, IF ANY RECORD OTHER THAN ZERO CAN EVER BE CONSIDERED GOOD. OUR COMPANIES HAVE ONGOING EXTENSIVE SAFETY EFFORTS AND THE RECORD INDICATES A CONTINUATION OF STEADY LONG-TERM IMPROVEMENT.

WE HAVE WORKED ON BOTH A FORMAL AND AN INFORMAL BASIS

EXPERT RECOMMENDATIONS

IN ADDITION, TIE-FEEDER CIRCUIT BREAKERS MAY BE INSTALLED AT OTHER LOCATIONS BETWEEN RECTIFIERS, AND CIRCUIT BREAKERS MAY BE INSTALLED ON STUB-FEED BRANCH CIRCUITS.

(b) CIRCUIT BREAKERS SHALL NOT BE CONNECTED IN PARALLEL.

(c) EACH DIRECT CURRENT CIRCUIT BREAKER SHALL HAVE A MINIMUM

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American Mining Congress Proposals

EXPERT RECOMMENDATIONS

Sec. 75.800-4 Testing, examination, and maitenance of HIGH-VOLTAGE circuit breakers AND DISTRIBUTION EQUIPMENT; PROCEDURES. (Formerly Sec. 75.800-3)

HIGH-VOLTAGE circuit breakers and ** DISTRIBUTION EQUIPMENT shall be tested and examined ** by a ** qualified ELECTRICIAN as provided in 30 CFR 75.153 *(c)(2)* TO ASSURE THAT THE EQUIPMENT DOES NOT CONSTITUTE A FIRE, ELECTRIC SHOCK, IGNITION, OR OPERATIONAL HAZARD.

*(a) EACH HIGH-VOLTAGE GROUNDING RESISTOR AND CIRCUIT BREAKER PROTECTING UNDERGROUND CIRCUITS WHICH ARE LOCATED ON THE SURFACE SHALL BE TESTED AT THE TIME OF THE INITIAL INSTALLATION AND AT LEAST ANNUALLY THEREAFTER. THE REQUIRED TESTS SHALL INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING:

(1) THE GROUND-FAULT PROTECTIVE DEVICES SHALL BE TESTED BY PASSING AN AMOUNT OF CURRENT EQUAL TO 40 PERCENT OF THE GROUND-FAULT CURRENT OF THE SYSTEM THROUGH THE GROUND-FAULT CURRENT TRANSFORMER. IF POTENTIAL GROUND-FAULT TRIPPING IS USED, A VOLTAGE SHALL BE IMPRESSED ON THE GROUND-FAULT RELAY EQUAL TO 40 PERCENT OF THE GROUND-FAULT POTENTIAL TRANSFORMER SECONDARY VOLTAGE.

(2) THE GROUNDING RESISTOR SHALL BE TESTED TO ASSURE THAT IT IS NOT OPEN OR SHORTED.

(3) THE SYSTEM GROUNDING MEDIUM SHALL BE TESTED TO ASSURE LOW RESISTANCE TO EARTH.

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Sec. 75.804 Testing, examination, and maintenance of high-voltage eqipment.

(a) High-voltage equipment shall be tested, examined, and maintained only by qualified persons or persons under their supervision.

(b) High-voltage resistors and high-voltage circuit protective devices located on the surface to protect underground circuits shall be tested when installed and annually after installation.

(c) Surface and underground high-voltage distribution equipment supplying circuits which extend underground shall be tested and examined once every three months.

(d) A qualified person shall certify, by initial and date, that tests and examinations were performed. Hazards shall be corrected or recorded if not corrected by the end of the shift.

American Mining Congress Proposals

No provisions.

KEY DIFFERENCES:

- Provision in MSHA recommendations that qualified electrician must be present when testing and examining high voltage equipment vs. provision that qualified persons or persons under their supervision can conduct tests in expert recommendations.
- No explicit guidelines for tests on high-voltage resistors and high-voltage circuit protective devices in MSHA vs. Explicit guidelines for such tests in expert recommendations.
- Provision requiring that hazards be removed immediately (to prevent MINE EXPLOSIONS or MINE FIRES) in expert recommendations vs. provision that hazards will be corrected or recorded by the end of a shift.

EXPERT RECOMMENDATIONS

(b) SURFACE AND UNDERFROUND HIGH-VOLTAGE DISTRIBUTION EQUIPMENT (SUCH AS TRANSFORMERS, POWER CENTERS, RECTIFIERS, AND SWITCHGEAR) shall be tested and examined at least once each ** 30 CALENDAR DAYS. THE REQUIRED EXAMINATIONS AND tests shall include **, BUT ARE NOT LIMITED TO, THE FOLLOWING:

(1) ACTUATING THE UNDERVOLTAGE, GROUND-FAULT, AND OVERCURRENT PROTECTIVE RELAYS IN SUCH A MANNER TO CAUSE THE CIRCUIT BREAKER TO OPEN.

(2) TESTING EACH GROUND CHECK CIRCUIT BY BREAKING THE CONTINUITY of the ground check conductor ** AT THE EXTREME END OF EACH MONITORING CIRCUIT.

(3) EXAMINATION TO ASSURE AGAINST EXPOSED ENERGIZED CONDUCTORS OR PARTS.

(4) VERIFICATION OF PROPER OVERCURRENT PROTECTION.

(5) EXAMINATION AND TESTS OF ALL COMPONENTS OF PERMISSIBLE EQUIPMENT TO ASSURE COMPLIANCE WITH APPLICABLE REQUIREMENTS OF 30 CFR PART 18.

(c) Repairs, CALIBRATIONS, or adjustments WHICH are indicated by such examinations and tests shall be carried out immediately.

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EXPERT RECOMMENDATIONS

Sec. 75.505 Electric Circuits and Electric Equipment; Installation; Maintenance

ALL ELECTRIC CIRCUITS AND ELECTRIC EQUIPMENT SHALL BE INSTALLED AND MAINTAINED IN SAFE OPERATING CONDITION SO THAT THE CIRCUITS AND EQUIPMENT DO NOT CREATE OR CONTRIBUTE TO HAZARDS SUCH AS FIRE, ELECTRIC SHOCK, IGNITION OR OPERATIONAL HAZARDS TO THE USER OR OPERATOR OF SUCH EQUIPMENT OR TO OTHER MINERS.

Sec. 75.505-1 Installation and Maintenance; Electric Circuits and Equipment; Persons Performing Work. (Formerly Subsec. 75.510, 75.510-1, 75.511 and 75.511-1)

(a) Except as provided in 30 CFR 75.505-1(b), the Installation and Maintenance of all Electric Circuits and Electric components of Electric Equipment shall be performed by an Electrician, Qualified in the voltage category of the circuit or equipment involved, or by a person under the direct supervision of a qualified electrician performs electricial work, the qualified electrician shall:

(1) ascertain that the equipment or circuit is deenergized.
(2) determine the extent and nature of work to be performed.
(3) be physically present while the work is being performed.
(4) examine and test the completed work before the circuit or equipment is energized to assure compliance with all applicable requirements of Part 75 and that no other hazards to miners are created.

MSHA Draft of Revisions

Sec. 75.502 Installation and maintenance of electric circuits and equipment.

(a) Electric circuits and equipment shall be installed and maintained in safe operating condition.

(b) Except for trailing cable splices and repairs, only qualified persons or persons under their supervision shall install or perform electrical work on electric circuits and equipment.

(c) Cables and insulated wires shall have insulation with a voltage rating of at least the nominal voltage of the circuit in which they are used.

(d) Circuit protective devices shall be rated for the voltage of the circuits in which they are used and shall have adequate current-interrupting capacity.

American Mining Congress Proposals

No provisions.

KEY DIFFERENCES:

- o Ambiguous definition of safe operating condition in MSHA proposal vs. clear definition of experts.
- o No clause providing for direct supervision of installation and maintenance in MSHA regulation vs. Direct supervision clause in expert's report.

EXPERT RECOMMENDATIONS

(b) Repairs and splices of low-voltage trailing cable shall be made by a person specified in paragraph (a) of this section or by a person who has at least 1 year of experience on a working section of an underground coal mine and has been trained as specified in 30 CFR 75.154. Repairs and splices of low-voltage cables by a person trained as specified in 30 CFR 75.154 shall not include the repair or installation of cable terminations, entering cables in any compartment, or the joining of different sizes or types of cables.

MSHA Draft of Revisions

American Mining Congress Proposals

WITH THE UMWA AT ALL LEVELS BECAUSE WE SINCERELY BELIEVE THAT TRUE SAFETY IS A TEAM EFFORT, AND WE SUBSCRIBE TO THE CONCEPT THAT THE NONADVERSARIAL APPROACH IS THE BEST PROSPECT FOR SAFETY IMPROVEMENT. OVER THE YEARS, WE ALSO HAVE DEALT CLOSELY WITH MSHA AND WE BELIEVE THAT THE SYNERGISM HAS BEEN GOOD FOR ALL OF US. THE ATTACHED TABLES SHOW THE RECORD. WE ARE NOT SATISFIED WITH THE NUMBERS, BUT WE ARE ENCOURAGED BY THE TREND.

RECENTLY, BCOA'S PRESIDENT AND VICE PRESIDENT OF HEALTH AND SAFETY COLLABORATED ON A PAPER THAT SET FORTH OUR VIEWS ON THE APPROPRIATE ROLES OF EACH PARTY IN THE SAFETY EFFORT -- MANAGEMENT, LABOR AND GOVERNMENT -- AND HOW THE PROPER INTERRELATIONSHIP OF THESE PARTIES RESULTS IN A SAFETY POLICY THAT CAN REDUCE ACCIDENTS. INDEED, THE MOVEMENT TOWARDS THIS APPROACH OVER THE PAST FEW YEARS HAS HAD A LOT TO DO WITH THE IMPROVEMENTS WE HAVE SEEN IN THE SAFETY RECORD. THIS PAPER IS ATTACHED AS A PART OF OUR STATEMENT.

FROM THAT PAPER SEVERAL POINTS ARE CLEAR.

ONE, THE PRIME RESPONSIBILITY FOR COAL MINE HEALTH AND SAFETY RESTS WITH MANAGEMENT, WITH BOTH THE UNION AND THE GOVERNMENT PLAYING IMPORTANT BUT SECONDARY ROLES.

TWO, WE CAN NEITHER IGNORE THE PAST RECORD OF IMPROVEMENT NOR TAKE COMFORT IN ITS PROGRESS. BUT, WE DO BELIEVE THAT THE CONSISTENT WAVING OF THE BLOODY SHIRT NO LONGER IS PRODUCTIVE.

THREE, HEALTH AND SAFETY MUST BE GOAL-ORIENTED AND, TO THE EXTENT FEASIBLE, NONADVERSARIAL.

FOUR, IN THE FINAL ANALYSIS, WE WILL MAKE FURTHER MAJOR IMPROVEMENTS IN HEALTH AND SAFETY TO THE EXTENT THAT WE CAN REMOVE PEOPLE FROM RISK.

FIVE, THE ROLE OF REGULATION AND ENFORCEMENT HAS HAD A MAJOR BENEFICIAL IMPACT UPON THE PAST RECORD, BUT ITS EXPANSION IS AT BEST MEANINGLESS AND AT WORST COUNTERPRODUCTIVE.

WE ARE CONCERNED THAT CURRENT ATTACKS ON MSHA, COULD SHIFT IT AWAY FROM THE MORE MEANINGFUL APPROACH IT IS DEVELOPING TO FURTHER THE SAFETY EFFORT. MSHA MUST BE ENCOURAGED TO BECOME A STRONG AND INTELLIGENT ENFORCEMENT VEHICLE WHILE RECOGNIZING BOTH THE LIMITS OF ENFORCEMENT AND THE NEED TO MORE RATIONALLY DEPLOY ITS RESOURCES. THE RECORD OF THE 80'S CLEARLY DEMONSTRATES THE WISDOM OF THIS COURSE.

HAVING SAID THAT, WE AT BCOA STILL ARE DISMAYED AT THE INSTITUTIONAL INERTIA WITHIN THE AGENCY AND ITS APPARENT INABILITY TO RESPOND CREATIVELY TO THE SENSIBLE CHANGES REQUIRED TO MEET TODAY'S REALITY. THE CRITICISM WE HAVE OF MSHA IS DIRECTED MAINLY AT THIS INERTIA.

THERE ARE SEVERAL EXAMPLES WHICH WE BELIEVE DEMONSTRATE OUR CONCERN.

FOR EXAMPLE, THE INCREASE IN THE PERCENTAGE OF VIOLATIONS CLASSED AS SIGNIFICANT AND SUBSTANTIAL (S&S) OR UNWARRANTABLE CONSTITUTES REGRESSION. ATTACHED IS A CHART WHICH SHOWS THIS CONTINUOUS INCREASE EACH QUARTER SINCE 1983. THERE IS ABSOLUTELY NO BASIS FOR THIS TREND EXCEPT THE PERCEPTION AMONG MSHA'S FIELD PERSONNEL OF

A POLITICAL NEED TO INCREASE THE PERCENTAGE OF VIOLATIONS CATEGORIZED AS S&S OR UNWARRANTABLE. A CONTINUATION OF THIS TREND WILL RESULT IN S&S AND UNWARRANTABLE CITATIONS BECOMING MEANINGLESS AS ENFORCEMENT SANCTIONS.

ANOTHER EXAMPLE IS THE POSITION TAKEN BY MSHA IN A DISCRIMINATION CASE BROUGHT BY LAID OFF EMPLOYEES NOT RECALLED FOR LACK OF MANDATORY TRAINING. ARBITRATION CASE HISTORIES UNDER THE NATIONAL BITUMINOUS COAL WAGE AGREEMENT REGULARLY DISALLOW THE GRIEVANCE AS A CONTRACTUAL MATTER. THE REVIEW COMMISSION RULED THAT THE EMPLOYER HAD NOT DISCRIMINATED UNLAWFULLY, THAT THERE WAS NO PROTECTED ACTIVITY INVOLVED. DESPITE THIS, MSHA HAS APPEALED TO COURT IN AN EFFORT TO ESTABLISH A PERCEIVED CONTRACTUAL RIGHT AS A RIGHT UNDER LAW. IF MSHA'S ARGUMENT PREVAILS, THERE COULD BE DIFFERENT LAWS FOR DIFFERENT MINES, DEPENDING ON WHETHER A LABOR AGREEMENT EXISTS AND, IF SO, UPON ITS TERMS.

BCOA DOES NOT CONSIDER THE QUESTION OF FOUR INSPECTIONS ANNUALLY (OR TWO AT SURFACE MINES) TO BE AN ISSUE OF ANY SIGNIFICANCE. AT ANY LARGE MINE, SELDOM DOES A DAY GO BY THAT A FEDERAL INSPECTOR, OR FREQUENTLY SEVERAL, IS NOT PRESENT. MOST OF THE MINES OPERATED BY OUR MEMBERS ARE LARGE, AND SEEM TO HAVE A CERTAIN ATTRACTIVENESS FOR FEDERAL INSPECTORS BEYOND ANY RATIONAL INSPECTION NEED. IT IS NOT UNUSUAL FOR SEVERAL INSPECTORS TO BE AT A LARGE MINE AT THE SAME TIME, USUALLY INVOLVED IN DIFFERENT TYPES OF INSPECTIONS OR INVESTIGATIONS. THIS PRACTICE, AT LEAST AS IT APPLIES TO MINES OPERATED BY OUR MEMBERS, HAS LED

TO A FEDERAL PRESENCE FAR IN EXCESS OF WHAT IS ACTUALLY NEEDED TO CONDUCT FOUR COMPLETE INSPECTIONS ANNUALLY.

THUS, MSHA DOES NOT FULLY USE ITS INSPECTOR FORCE AT THOSE MINES WHERE SAFETY PROBLEMS COULD BEST BE ADDRESSED THROUGH ENFORCEMENT. FURTHERMORE, THE DISRUPTION AT THE MINE AND THE DIVERSION OF MINE PERSONNEL IS AN UNFAIR COST BURDEN TO THE SAFETY CONSCIOUS OPERATORS.

WE BELIEVE MSHA SHOULD REVIEW THE CURRENT REGULATION FOR REPORTING ACCIDENTS, ILLNESSES AND INJURIES, AND ITS METHOD FOR RECORDING AND ANALYZING THE REPORTED DATA. WHEN THE REGULATION WAS ADOPTED DURING A PREVIOUS ADMINISTRATION, BCOA'S REQUEST FOR A PUBLIC HEARING IN THE RULEMAKING PROCESS WAS DENIED. THE CURRENT REGULATION CONSTITUTES A SIGNIFICANT DEPARTURE FROM THE OSHA REGULATION, AND PERMITS A WIDE RANGE OF REPORTING PRACTICES WITHIN THE FRAMEWORK OF THE REQUIREMENTS. WHAT IS NEEDED IS A BASIC REVISION OF BOTH THE REGULATION AND OF THE SYSTEM MSHA USES TO RECORD AND REPORT THE DATA SO THAT IT CAN BE USED FOR ANALYTICAL PURPOSES AND FOR MAKING VALID PERFORMANCE COMPARISONS WHERE SUCH COMPARISONS ARE DESIRABLE.

THE ACADEMY OF SCIENCE COMMITTEE ON UNDERGROUND COAL MINE SAFETY FOUND IT NECESSARY TO CREATE A NEW RATING SYSTEM IN ORDER TO COMPARE THE SAFETY PERFORMANCE OF THE LARGEST PRODUCERS. THIS INDICATED THE WEAKNESS OF THE MSHA SYSTEM, BUT THE NEW SYSTEM ALSO HAS MAJOR FLAWS. FOR EXAMPLE, IN COMPARING INTERCOMPANY PERFORMANCE IT

NUMERICALLY EQUATES A FATALITY WITH AN INJURY WHICH COULD INVOLVE ONLY ONE LOST DAY, PROVIDED THAT INJURY RESULTED FROM ONE OF FOUR SELECTED CAUSES. THE ACADEMY-DEVELOPED SYSTEM ALSO MISLEADS THE CASUAL READER, (AS INDICATED BY NEWSPAPER ACCOUNTS OF THE RECENT PRESS RELEASE BY A WASHINGTON LAW FIRM) BY STATISTICALLY COMBINING FATALITIES AND PERMANENT DISABILITIES, THE MAJORITY OF WHICH ARE HERNIAS.

MSHA'S REGULATORY REVISION PROGRAM HAS BEEN CUMBERSOME AND SLOW. MSHA'S FIRST APPOINTED GROUPS OF ITS OWN TECHNICIANS AS DRAFTING COMMITTEES, COMMITTEES MADE UP OF PERSONS HAVING NARROW TECHNICAL EXPERTISE, AND APPARENTLY DRIVEN BY THE INSTITUTIONAL INERTIA DISCUSSED ABOVE, WHICH PREDETERMINED A MORE COMPLEX REGULATORY STRUCTURE. INDUSTRY'S FORMAL REQUEST (PRESENTED BY BCOA AND AMC) TO PERMIT INDUSTRY EXPERTS TO MEET WITH AND PRESENT DATA TO DRAFTING COMMITTEES WAS DENIED. UNIQUELY, A GAG ORDER WAS PLACED ON COMMITTEE MEMBERS. THEY WERE INSTRUCTED TO REPORT CONTACTS FROM OUTSIDE INTERESTS. NONETHELESS, IT APPEARS THAT SOME OF THE DRAFTING COMMITTEE DRAFTS WERE GIVEN SELECTIVELY TO ONE OR MORE SPECIAL INTEREST GROUPS OTHER THAN BCOA AND AMC.

BY CITING THESE EXAMPLES WE DO NOT INTEND TO INDICT MSHA. TO THE CONTRARY, THERE IS MUCH THAT THE AGENCY CAN BE PROUD OF AND MANY MINERS WOULD NOT BE ALIVE TODAY IF IT WERE NOT FOR PROPER, WELL-REASONED RULES.

AT THE SAME TIME, WE VERY STRONGLY SUGGEST THAT THE CONCEPT OF AN OVERWHELMING FEDERAL PRESENCE AS THE HEART

OF THE SAFETY EFFORT SIMPLY DOES NOT SQUARE WITH PRESENT REALITY. WHILE WE CAN NEVER IGNORE THE BENEFITS OF PROPER REGULATION AND ENFORCEMENT, WE WOULD BE DERELICT IF WE DID NOT POINT TO THE CONSEQUENCES OF ITS EXCESSES - A COUNTERPRODUCTIVE USE OF THE RESOURCES PROVIDED BY CONGRESS AND A WEAKENING OF STATUTORY INTENT.

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COMPARISON OF FATALITY RECORDS
OF BCOA MEMBER COMPANIES AND
TOTAL COAL INDUSTRY - 1984 AND 1985

	1984		1985	
	BCOA	ALL COAL MINING	BCOA	ALL COAL MINING
TOTAL FATALITIES	18	126	11	67
ROOF FALL FATALITIES	0	31	0	16
RIB FALL FATALITIES	2	3	0	0

SOURCE: MSHA DATA

NOTE: DURING EACH OF THESE TWO YEARS, BCOA MEMBERS PRODUCED MORE THAN ONE-HALF THE NATION'S UNDERGROUND COAL, AN ESPECIALLY SIGNIFICANT FACTOR WITH RESPECT TO ROOF-FALL AND RIB-FALL DATA.

Coal Mining Fatalities and Fatality Rate since Federal Coal Mine Health and Safety Act of 1969

YEAR	FATALITIES	RATE
1970	260	.210
1971	181	.144
1972	156	.118
1973	132	.096
1974	133	.090
1975	155	.117
1976	141	.074
1977	139	.066
1978	106	.053
1979	144	.063
1980	133	.059
1981	153	.072
1982	122	.058
1983	70	.040
1984	126	.067
1985	67	.037

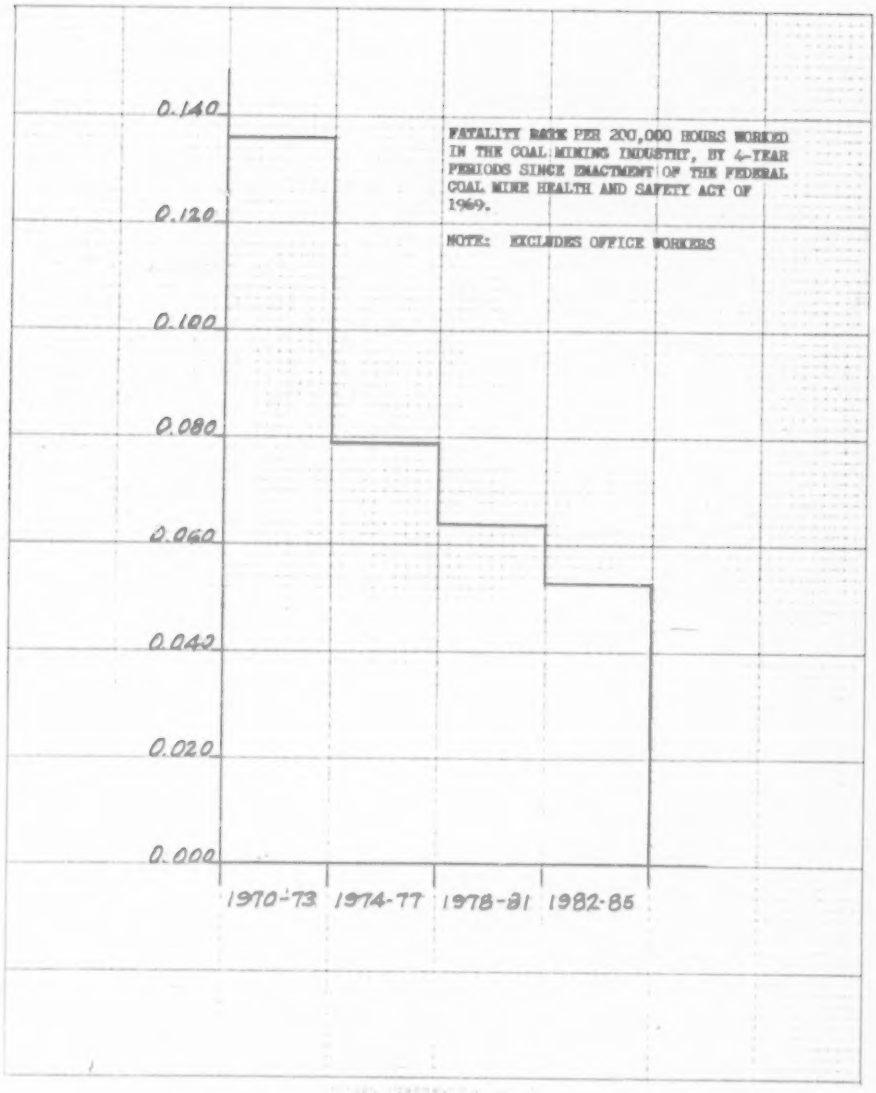
Source: Injury Experience in Coal Mining, 1970-85, an annual publication of MSHA and predecessor agencies.

COAL MINING FATALITIES
AND FATALITY RATES BY FOUR-YEAR PERIODS
SINCE FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

Four-Year Period	Fatalities	Rate	Fatalities/ Year
1970-'73	729	0.138	182
1974-'77	568	0.079	142
1978-'81	536	0.064	134
1982-'85	385	0.053	96

Source: Injury Experience in Coal Mining, 1970-85, an annual publication of MSHA and predecessor agencies.

Note: Data exclude hours worked by office workers.


0.140
0.120
0.100
0.080
0.060
0.042
0.020
0.000
1970-73
1974-77
1978-81
1982-85
FATALITY RATE PER 200,000 HOURS WORKED IN THE COAL MINING INDUSTRY, BY 4-YEAR PERIODS SINCE ENACTMENT OF THE FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969.
NOTE: EXCLUDES OFFICE WORKERS

0.300
0.200
0.100
0.000
1970
1971
1972
1973
1974
1975
1976
1977
1978
1979
1980
1981
1982
1983
1984
1985
FATALITY RATE PER 200,000 HOURS WORKED IN THE COAL MINING INDUSTRY SINCE ENACTMENT OF THE FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969.
NOTE: EXCLUDES OFFICE WORKERS
DIETZGEN CORPORATION NO 375

REALIZATION OF MINE HEALTH AND SAFETY GOALS

JOSEPH P. BRENNAN
AND
ROBERT L. VINES

PRESENTED BEFORE
SOCIETY OF MINING ENGINEERS
AMERICAN INSTITUTE OF MINING,
METALLURGICAL AND PETROLEUM ENGINEERS

ST. LOUIS, MISSOURI
SEPTEMBER 9, 1986

WHAT MAKES A SAFE COAL MINE? WHAT IS THE RECORD OF THE COAL INDUSTRY WITH RESPECT TO COAL MINE HEALTH AND SAFETY? WHAT MUST BE DONE TO MAKE THAT RECORD BETTER?

THERE ARE NO EXACT ANSWERS TO THESE QUESTIONS, NO PRIMER TO OUTLINE FOR THE MINE OPERATOR A STEP-BY-STEP WAY TO IMPROVE HIS HEALTH AND SAFETY RECORD.

OVER TIME, THERE HAVE BEEN SEVERAL GENERAL APPROACHES.

FIRST, THERE HAS BEEN THE "A COAL MINE IS A DANGEROUS PLACE AND ACCIDENTS ARE TO BE EXPECTED" SYNDROME. THIS APPROACH DIED OR SHOULD HAVE WITH THE 1969 ACT. SOME COAL COMPANIES MAY STILL CLING TO IT, BUT THEY ARE A DYING PART OF OUR INDUSTRY AND WILL SOON BE GONE FROM THE SCENE.

SECOND, THERE ARE THOSE WHO BELIEVE IN ONE DIMENSIONAL SOLUTIONS, RANGING FROM THOSE WHO WAVE THE BLOODY SHIRT AND CALL FOR DRACONIAN PENALTIES TO THOSE WHO WOULD SOLVE THE PROBLEM WITH SUCH THINGS AS TRAINING OR VAGUELY-DEFINED COOPERATION. THIS IS A WIDELY HELD VIEW TODAY AND FOR GOOD REASON. SOME SIGNLE DIMENSION PROPOSALS MAKE SENSE AND HAVE SAVED LIVES. BUT THERE IS NO ONE SIMPLISTIC ANSWER TO THE SAFETY PROBLEM BECAUSE THERE IS NO ONE

CAUSE FOR ACCIDENTS AND MINING CONDITIONS VARY WIDELY.

THIRD, THERE IS A SCHOOL OF THOUGHT THAT SUGGESTS THAT REAL COAL MINE HEALTH AND SAFETY IS ATTAINABLE ONLY THROUGH MANAGEMENT DEDICATION, DISPASSIONATE ANALYSIS -- AS TO CAUSE AND EFFECT, AND COMMONALITY OF PURPOSE. OF COURSE, THE ONLY VALID PURPOSE IS THE REDUCTION AND ELIMINATION OF MINE ACCIDENTS AND DISEASE.

AMERICAN COAL MINES ARE TODAY FAR SAFER THAN THEY HAVE EVER BEEN. AS SHOWN ON TABLE I, BOTH THE FATAL FREQUENCY AND THE ABSOLUTE NUMBER OF FATALITIES HAVE SHARPLY DECLINED OVER RECENT YEARS. THERE APPEARS TO BE A DISTURBING PLATEAUING EFFECT WHICH SHOULD CONCERN ALL OF US IN THE BUSINESS. HOWEVER, THE SUBSTANTIAL GAINS THAT HAVE BEEN MADE MUST BECOME THE PLATFORM FROM WHICH FUTURE PROGRESS BEGINS. TO DENY THE GAINS IS AS COUNTER-PRODUCTIVE AS TO SUGGEST THAT THE MILLENNIUM IN HEALTH AND SAFETY HAS BEEN REACHED.

COAL MINES ALSO HAVE MADE SIGNIFICANT STRIDES IN THE ELIMINATION OF COAL WORKERS' PNEUMOCONIOSIS. WE KNOW THAT DUST LEVELS IN OUR COAL MINES ARE LOWER THAT ANYWHERE ELSE IN THE WORLD AS IS SHOWN ON TABLE II. WHAT WE DON'T KNOW, AND WHAT WE SHOULD, IS THE EXACT CORRELATION BETWEEN DUST EXPOSURE AND DISEASE.

FATAL ACCIDENT RATES ARE NOT UNIFORM IN ALL MINES. AS SHOWN ON TABLE III, THERE IS A FAR LARGER THAN STATISTICALLY WOULD BE EXPECTED INCIDENCE OF FATAL ACCIDENTS IN SMALLER MINES. AS A NOTE OF INTEREST, THOSE COMPANIES BELONGING TO BCOA TEND TO HAVE FEWER FATALITIES THAN THE REST OF THE INDUSTRY AS SHOWN ON TABLE IV.

THE CAUSES OF FATALITIES REMAIN PRETTY MUCH STATIC WITH ROOF AND RIB FALLS BEING THE MOST COMMON UNDERGROUND AND HAULAGE AND MACHINERY ACCIDENTS PREDOMINANT ON THE SURFACE. OF LATE HOWEVER, WE HAVE BEEN SEEING A NUMBER OF UNUSUAL ACCIDENTS WITH LITTLE HISTORY AND ALMOST NO PREDICTABILITY.

UNPREDICTABLE HUMAN BEHAVIOR CONTINUES TO BE A MAJOR UNKNOWN IN MOST

OF THE FATAL ACCIDENTS WE HAVE STUDIED. THE ZONE OF IGNORANCE ON THIS HUMAN DIMENSION REMAINS A MAJOR ROADBLOCK TO OUR EFFORTS TO MOVE FORWARD. WE KNOW THE WHAT HAPPENED QUESTION. WHAT IS OFTEN OBSCURED IN THE FOG IS THE WHY IT HAS OCCURRED, ANSWERS ONLY ARRIVED AT BY HARD DISPASSIONATE ANALYSIS WITH DUE SENSITIVITY TO NORMAL HUMAN EMOTIONS.

IN CONNECTION WITH THE ABOVE, OUR INDUSTRY, LIKE MOST OTHERS IN THE U.S., IS MOVING ON THE ALCOHOL AND DRUG PROBLEM. CURRENTLY, MSHA HAS INITIATED A LABOR/MANAGEMENT/GOVERNMENT COMMITTEE STUDYING THE QUESTION. WE KNOW THAT A SERIOUS QUESTION EXISTS. WE DO NOT KNOW ITS DIMENSIONS, NOR DO WE BELIEVE THAT IT WILL PROVIDE THE SIMPLE ANSWER TO THE WHY QUESTION WHICH WE SO ARDENTLY SEEK.

THERE HAS BEEN SOME COMING TOGETHER OF THE PARTS OF THE COAL COMMUNITY CONCERNED WITH HEALTH AND SAFETY. FOR EXAMPLE, BCOA AND THE UMWA CONTINUE THEIR ONGOING RELATIONSHIP IN BOTH THE TRAINING AND SAFETY AREA. MSHA HAS MADE WHAT WE CONSIDER TO BE SIGNIFICANT STRIDES IN IMPROVING THEIR CONTRIBUTION TO SAFETY AND HAS BEEN MORE IMAGINATIVE AND INNOVATIVE THAN ANY ADMINISTRATION IN RECENT MEMORY.

RECORD OF N
BY QUARTE

FOR EACH OF THE THREE TYPES OF
FORMULA, FIXED AMOUNT, SPECIAL

- NUMBER OF CIVIL PENALT
- DOLLAR AMOUNTS PROPOSE
- PERCENTAGE EACH PENALT
- PROPOSED DOLLAR AMOUNT

NOTES:
- THE CIVIL PENALTY FORM
- THE FIXED AMOUNT ($20
"S&S" AND IS ABATED WI
- THE SPECIAL PENALTY PR
VIOLATIONS ARE DEEMED

SOURCE: BCOA ANALYSIS OF MSHA DA
METAL/NONMETAL MINING, A

HA CIVIL PENALTY PROPOSALS
, 1983 THROUGH JUNE 1986

CIVIL PENALTY ASSESSMENT PROCEDURES (DOLLAR AMOUNT
PROCEDURE):

ES PROPOSED BY MSHA

BY MSHA

PROCEDURE EMPLOYED

PER VIOLATION

LA IS EMPLOYED FOR VIOLATIONS CLASSED "S&S."

PENALTY IS EMPLOYED WHEN VIOLATION IS NOT CLASSED
HIN THE TIME FIXED BY THE INSPECTOR.

CEDURE IS UTILIZED AT DISCRETION OF MSHA WHENEVER
NUSUALLY SERIOUS, I.E., CLASSED "UNWARRANTABLE."

- PRESENTED SEPARATELY FOR COAL MINING,
ALL MINING.

MSHA CIVIL PENALTY ASSESSMENTS: COAL MINING, 1983-1986

1983	VIOLATIONS ASSESSED				PROPOSED AMOUNT ($)			
	Formula	Fixed	Special	Total	Formula	Fixed	Special	Total
1st Quarter	7,462	23,044	327	30,833	988,928	468,888	359,245	1,889,853
2nd Quarter	6,220	16,867	411	22,698	841,862	321,348	506,850	1,670,052
3rd Quarter	6,243	13,093	271	19,607	772,089	261,868	182,818	1,215,959
4th Quarter	9,724	15,562	327	25,613	1,181,624	311,248	240,058	1,732,914
---1984---								
1st Quarter	9,484	13,957	483	23,844	1,186,868	279,148	371,568	1,756,768
2nd Quarter	12,184	14,486	748	27,338	1,332,391	289,728	579,698	2,201,801
3rd Quarter	12,768	13,828	786	26,582	1,294,914	268,568	570,725	2,126,199
4th Quarter	14,333	11,433	875	26,641	1,444,889	228,668	630,225	2,302,894
---1985---								
1st Quarter	14,669	10,527	1,217	26,413	1,518,377	210,548	833,288	2,562,197
2nd Quarter	16,389	10,824	1,143	28,276	1,709,824	216,488	740,739	2,667,834
3rd Quarter	15,578	8,672	956	25,206	1,666,645	173,448	756,138	2,596,285
4th Quarter	15,625	8,875	851	24,551	1,750,386	161,588	640,025	2,551,831
---1986---								
1st Quarter	17,877	8,686	1,004	26,767	1,918,985	172,128	733,275	2,816,388
2nd Quarter	16,968	8,416	867	26,243	1,931,947	168,328	524,688	2,624,867
3rd Quarter								
4th Quarter								

1983	PERCENT OF TOTAL VIOLATIONS ASSESSED				AMOUNT per VIOLATION ($)			
	Formula	Fixed	Special	Total	Formula	Fixed	Special	Average
1st Quarter	24.2%	74.7%	1.1%	100.0%	$132.53	$20.00	$1,098.61	$58.67
2nd Quarter	27.4%	70.8%	1.8%	100.0%	$135.35	$20.00	$1,233.21	$73.58
3rd Quarter	31.8%	66.8%	1.4%	100.0%	$123.67	$20.00	$671.62	$62.02
4th Quarter	38.0%	60.8%	1.3%	100.0%	$121.52	$20.00	$734.18	$67.66
---1984---								
1st Quarter	39.4%	58.5%	2.0%	100.0%	$117.62	$20.00	$769.28	$73.68
2nd Quarter	44.3%	53.0%	2.7%	100.0%	$110.00	$20.00	$783.36	$80.56
3rd Quarter	48.2%	49.2%	2.7%	100.0%	$101.42	$20.00	$800.39	$80.23
4th Quarter	53.8%	42.9%	3.3%	100.0%	$100.75	$20.00	$720.26	$86.44
---1985---								
1st Quarter	55.5%	39.9%	4.6%	100.0%	$103.51	$20.00	$684.78	$97.01
2nd Quarter	57.7%	38.3%	4.0%	100.0%	$104.84	$20.00	$648.06	$94.32
3rd Quarter	61.8%	34.4%	3.8%	100.0%	$106.99	$20.00	$790.92	$103.00
4th Quarter	63.6%	32.9%	3.5%	100.0%	$112.02	$20.00	$752.09	$103.94
---1986---								
1st Quarter	63.8%	32.2%	4.0%	100.0%	$111.90	$20.00	$676.45	$105.22
2nd Quarter	64.6%	32.1%	3.3%	100.0%	$113.91	$20.00	$605.07	$100.02
3rd Quarter								
4th Quarter								

July 30, 1986

MSHA CIVIL PENALTY ASSESSMENTS: METAL/NONMETAL MINING: 1983-1986

	VIOLATIONS ASSESSED				PROPOSED AMOUNT ($)			
1983	Formula	Fixed	Special	Total	Formula	Fixed	Special	Total
1st Quarter	381	2,244	30	2,655	48,746	44,000	29,516	115,142
2nd Quarter	505	2,734	27	3,266	47,420	54,680	28,850	130,950
3rd Quarter	684	3,221	49	3,954	64,543	64,420	29,280	158,243
4th Quarter	1,142	3,678	51	4,871	96,056	73,560	32,700	202,316
---1984---								
1st Quarter	849	2,879	60	3,788	73,448	57,430	61,125	192,003
2nd Quarter	1,460	3,941	88	5,489	119,859	78,820	77,330	276,009
3rd Quarter	1,424	3,678	54	5,156	109,826	73,560	47,750	231,136
4th Quarter	1,867	4,008	101	5,976	153,384	80,160	69,950	303,494
---1985---								
1st Quarter	1,559	3,083	113	4,755	128,896	61,660	95,775	286,331
2nd Quarter	1,928	3,550	118	5,596	164,533	71,000	77,250	312,783
3rd Quarter	2,325	3,878	91	6,294	195,703	77,560	88,100	361,363
4th Quarter	2,549	4,425	145	7,119	221,766	88,500	103,750	414,016
---1986---								
1st Quarter	2,307	3,468	128	5,903	289,960	69,360	77,200	336,520
2nd Quarter	3,128	4,674	90	7,892	269,751	93,480	39,900	403,131
3rd Quarter								
4th Quarter								

	PERCENT OF TOTAL VIOLATIONS ASSESSED				AMOUNT per VIOLATION ($)			
1983	Formula	Fixed	Special	Total	Formula	Fixed	Special	Average
1st Quarter	14.4%	84.5%	1.1%	100.0%	$106.94	$20.00	$983.87	$43.37
2nd Quarter	15.5%	83.7%	0.8%	100.0%	$93.90	$20.00	$1,068.52	$40.09
3rd Quarter	17.3%	81.5%	1.2%	100.0%	$94.36	$20.00	$597.55	$40.02
4th Quarter	23.4%	75.5%	1.0%	100.0%	$84.11	$20.00	$641.18	$41.53
---1984---								
1st Quarter	22.4%	76.0%	1.6%	100.0%	$86.51	$19.95	$1,018.75	$50.69
2nd Quarter	26.6%	71.8%	1.6%	100.0%	$82.10	$20.00	$878.75	$50.28
3rd Quarter	27.6%	71.3%	1.0%	100.0%	$77.13	$20.00	$884.26	$44.83
4th Quarter	31.2%	67.1%	1.7%	100.0%	$82.16	$20.00	$692.57	$50.79
---1985---								
1st Quarter	32.8%	64.8%	2.4%	100.0%	$82.68	$20.00	$847.57	$60.22
2nd Quarter	34.5%	63.4%	2.1%	100.0%	$85.34	$20.00	$654.66	$55.89
3rd Quarter	36.9%	61.6%	1.4%	100.0%	$84.17	$20.00	$968.13	$57.41
4th Quarter	35.8%	62.2%	2.0%	100.0%	$87.00	$20.00	$715.32	$58.16
---1986---								
1st Quarter	39.1%	58.7%	2.2%	100.0%	$91.01	$20.00	$683.13	$60.40
2nd Quarter	39.6%	59.2%	1.1%	100.0%	$86.24	$20.00	$443.33	$51.08
3rd Quarter								
4th Quarter								

July 30, 1986

MSHA CIVIL PENALTY ASSESSMENTS: TOTAL (COAL AND METAL/NONMETAL): 1983-1986

1983	VIOLATIONS ASSESSED				PROPOSED AMOUNT ($)			
	Formula	Fixed	Special	Total	Formula	Fixed	Special	Total
1st Quarter	7,043	25,280	357	33,480	1,029,674	585,760	380,761	1,924,195
2nd Quarter	6,725	18,081	438	25,964	809,202	376,829	535,700	1,881,082
3rd Quarter	6,927	16,314	320	23,561	836,632	326,200	211,298	1,374,282
4th Quarter	18,866	19,248	370	38,484	1,277,600	304,000	272,750	1,935,230
---1984---								
1st Quarter	10,253	16,836	543	27,632	1,179,500	336,570	432,685	1,948,763
2nd Quarter	13,564	18,427	828	32,819	1,452,250	368,540	657,020	2,477,810
3rd Quarter	14,192	16,786	768	31,650	1,404,740	334,120	618,475	2,357,335
4th Quarter	16,200	15,441	976	32,617	1,597,393	388,829	700,175	2,686,300
---1985---								
1st Quarter	16,220	13,610	1,330	31,160	1,647,273	272,200	929,055	2,848,528
2nd Quarter	18,237	14,374	1,261	33,872	1,874,357	287,480	817,900	2,979,817
3rd Quarter	17,983	12,550	1,047	31,580	1,862,340	251,000	844,220	2,957,560
4th Quarter	18,174	12,500	996	31,670	1,972,872	250,000	743,775	2,965,847
---1986---								
1st Quarter	19,384	12,874	1,212	32,670	2,128,945	241,480	810,475	3,172,900
2nd Quarter	20,000	13,890	957	34,135	2,281,690	261,000	564,500	3,827,990
3rd Quarter								
4th Quarter								

1983	PERCENT OF TOTAL VIOLATIONS ASSESSED				AMOUNT per VIOLATION ($)			
	Formula	Fixed	Special	Total	Formula	Fixed	Special	Average
1st Quarter	23.4%	75.5%	1.1%	100.0%	$131.29	$20.00	$1,008.97	$57.46
2nd Quarter	25.9%	72.4%	1.7%	100.0%	$132.24	$20.00	$1,223.86	$69.37
3rd Quarter	29.4%	69.2%	1.4%	100.0%	$120.78	$20.00	$660.20	$58.33
4th Quarter	35.6%	63.1%	1.2%	100.0%	$117.59	$20.00	$721.56	$63.48
---1984---								
1st Quarter	37.1%	60.9%	2.0%	100.0%	$115.04	$19.99	$796.84	$70.53
2nd Quarter	41.3%	56.1%	2.5%	100.0%	$107.07	$20.00	$793.50	$75.50
3rd Quarter	44.8%	52.8%	2.4%	100.0%	$90.90	$20.00	$813.70	$74.46
4th Quarter	49.7%	47.3%	3.0%	100.0%	$98.68	$20.00	$717.39	$79.91
---1985---								
1st Quarter	52.1%	43.7%	4.3%	100.0%	$101.51	$20.00	$698.54	$91.39
2nd Quarter	53.8%	42.4%	3.7%	100.0%	$102.70	$20.00	$648.68	$87.97
3rd Quarter	56.8%	39.8%	3.3%	100.0%	$104.02	$20.00	$806.32	$93.89
4th Quarter	57.4%	39.5%	3.1%	100.0%	$100.51	$20.00	$746.76	$93.65
---1986---								
1st Quarter	59.3%	37.8%	3.7%	100.0%	$109.42	$20.00	$668.71	$97.12
2nd Quarter	58.8%	38.3%	2.8%	100.0%	$109.68	$20.00	$589.86	$88.71
3rd Quarter								
4th Quarter								

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FINALLY, THE IMPROVEMENT IN COAL MINE HEALTH AND SAFETY OCCURRED AGAINST A BACKDROP OF TWO EXTERNAL FACTORS WHICH NORMALLY WOULD DETRACT FROM SAFETY --- THE DEMOGRAPHICS AND ECONOMICS OF THE COAL INDUSTRY.

BEGINNING IN 1969 THERE WAS A TREMENDOUS INFLUX OF NEW YOUNG MINERS INTO THE COAL INDUSTRY. THE BIPOLAR AGE DISTRIBUTION OF THE LATE SIXTIES CHANGED QUICKLY TO MONOPOLAR AND THE AVERAGE AGE DROPPED SHARPLY, AS SHOWN ON TABLE V. AT THE SAME TIME, THE ECONOMIC FORTUNES OF THE INDUSTRY SHIFTED RADICALLY FROM THE "COAL IS VITAL TO AMERICA'S FUTURE OF THE 1970'S" TO THE STRINGENT MARKET CIRCUMSTANCES OF THE PRESENT.

SUCH DESIGNATION AND LACK OF CONTINUITY WOULD SEEM INIMICAL TO THE SAFETY EFFORT. YET, THE SAFETY RECORD IMPROVED.

BUT THIS IS PAST. THE QUESTION REMAINS, --- WHAT IS THE FUTURE, AND HOW CAN THE PROGRESS OF OUR RECENT PAST BE THE PROLOGUE?

THERE REMAINS NO MAGIC ELIXIR, NO SIMPLE ANSWERS. THERE ARE, GENERALIZATIONS FROM WHICH WILL FLOW SPECIFIC SAFETY PROGRMS OF VALUE AT PARTICULAR COAL MINES.

A SAFETY PHILOSOPHY IS THE FIRST PRIORITY, A SAFETY PHILOSOPHY THAT WILL PERMEATE OUR ENTIRE INDUSTRY. THAT PHILOSOPHY WILL HAVE THREE PARTS:

FIRST, IT WILL ASSUME THE TOTAL DEDICATION OF TOP MANAGEMENT, A DEDICATION THAT MAKES THE PRIMARY CORPORATE OBJECTIVE THE ATTAINMENT OF THE SAFETY GOAL.

SECOND, IT WILL ASSUME THAT THE INTENSITY OF THE TOP MANAGEMENT WILL SPREAD TO AND BE SHARED WITH EVERY EMPLOYEE, PARTICULARLY THOSE IN MANAGEMENT POSITIONS.

THIRD, IT WILL ASSUME THAT THE OUTSIDE FORCES IMPACTING ON SAFETY --- LABOR, GOVERNMENT, ACADEMIA, MANUFACTURERS, ETC. WILL RECOGNIZE AND ACCEPT THE PRIMACY OF SAFETY --- TRUE SAFETY --- AND BE WILLING TO SUBORDINATE ALL OTHER INTERESTS TO THAT END.

WITH THE RIGHT KIND OF PHILOSOPHY ALL THINGS ARE POSSIBLE <u>BECAUSE</u> ALL PARTIES ARE WORKING TOGETHER. WITHOUT IT THERE ALWAYS WILL BE UNACCEPTABLE RISKS BECAUSE THE FRICTION GENERATED BY NEEDLESS CONTROVERSY WILL DETRACT FROM THE POSITIVE EFFORT NEEDED.

WE MUST RECOGNIZE THAT A COAL MINE IS A DANGEROUS PLACE TO WORK. WHETHER ON THE SURFACE OR UNDERGROUND, THERE ARE NATURAL HAZARDS WHICH MUST BE DEALT WITH AND WHICH CALL FOR CONSTANT AWARENESS. COAL MINES ARE UNFORGIVING AND THE ROLL OF DEAD MEN AND WOMEN IS MUTE TESTIMONY TO THE COST OF INATTENTION OR BAD SAFETY PRACTICE.

THIS FACT HAS LED TO THE MULTITUDE OF LAWS UNDER WHICH WE CURRENTLY OPERATE, AND THE SPENDING OF COUNTLESS DOLLARS FOR COMPLIANCE WITH HEALTH AND SAFETY REGULATIONS, EQUIPMENT AND MINE DESIGN, ENGINEERING STUDIES AND EXTENSIVE RESEARCH AND DEVELOPMENT. BUT, THERE IS ANOTHER PART THAT WILL NEED MORE EMPHASIS IN THE YEARS AHEAD.

WE MUST INCREASINGLY LOOK TO TAKING PEOPLE OUT OF HARM'S WAY. IT IS ONE THING TO REDUCE DUST LEVELS; IT IS MUCH BETTER TO DESIGN AN AUTOMATED SYSTEM THAT WILL PERMIT PEOPLE TO WORK IN DUST-FREE ENVIRONMENTS. PULLING PILLARS HAS ALWAYS BEEN DANGEROUS. CABS HAVE HELPED, BUT REMOTE CONTROLLED-MINING IS

INFINITELY BETTER. SENDING PEOPLE TO EXAMINE POTENTIALLY HAZARDOUS AREAS OF THE MINE IS NOW A MUST FOR SAFETY, BUT A RELIABLE SESNOR SYSTEM WILL REDUCE THE RISK BY REDUCING THE EXPOSURE. MORE PRODUCTIVE MINING SYSTEMS AND EQUIPMENT WILL PERMIT FEWER PEOPLE TO BE AT RISK PER TON OF COAL MINED, AS WELL AS MAKING COAL MORE COMPETITIVE. THE POTENTIAL LIST IS LONG. THE PROMISE IS LIMITLESS.

WE MUST LOOK TO BETTER ERGONOMIC DESIGN. ILLUMINATION IS A POSITIVE SAFETY FACTOR IN A COAL MINE, BUT UNTIL A JOINT UMWA/BCOA/MSHA COMMITTEE WORKED WITH COAL MINERS TO DEVELOP MORE PEOPLE-ORIENTED SYSTEMS MUCH OF THE ADVANTAGE WAS LOST. HERE AGAIN THE LIST IS ENDLESS. MACHINES SHOULD BE DESIGNED AROUND PEOPLE. IN A COAL MINING SITUATION, ESPECIALLY IN AN EMERGENCY THE MINER DOES NOT HAVE THE LUXURY OF THINKING. HE MUST REACT BY INSTINCT. EVEN IN NORMAL SITUATIONS PEOPLE-ORIENTED DESIGN REDUCES FATIGUE, HELPS TO MAINTAIN VIGILANCE , AND PERMITS MORE EFFICIENT MINING

WE MUST LOOK TO THE EFFECTIVENESS OF THE SAFETY TRIAD -- MANAGEMENT, LABOR AND GOVERNMENT.

MANAGEMENT RETAINS THE PRIMARY RESPONSIBILITY FOR MINE SAFETY. THIS IS TRUE NOT ONLY UNDER LAW, BUT AS A PRACTICAL MATTER. ANY MANAGEMENT NOT WILLING TO SHOULDER THAT RESPONSIBILITY DOES NOT BELONG AND WILL BE UNABLE TO STAY LONG IN THE COAL BUSINESS.

THIS RESPONSIBILITY PRESUPPOSES A MANAGEMENT COMMITMENT TO SAFETY. AS SHOWN ON TABLE I THIS COMMITMENT IS BEING HONORED, ALTHOUGH CLEARLY MUCH REMAINS TO BE DONE. THERE HAVE BEEN LAPSES ON MANAGEMENT'S PART, AND THE RECORD, WHILE SUBSTANTIALLY BETTER, IS NOT YET ONE OF WHICH WE CAN BE PROUD.

HOWEVER, AS WE DISCUSS MANAGEMENT WE MUST REMEMBER THAT MANAGEMENT IS NOT A MONOLITH. IT IS MADE UP OF MANY INDIVIDUALS AND CORPORATIONS WITH ALL OF THE STRENGTHS AND WEAKNESSES OF SUCH DIVERSITY. THEREFORE, WE WOULD EMPHASIZE THE NEED TO EVALUATE MANAGEMENT ON A MORE INDIVIDUAL BASIS, NOT AS A HOMOGENOUS ENTITY.

THE SYSTEM SHOULD TAKE INTO ACCOUNT THE DIFFERENCES IN SAFETY PERFORMANCE. ALL TOO OFTEN, THE SAFEST CLASS OF MINES RECEIVES THE MOST ATTENTION FROM MSHA, WHILE THE LESS SAFE SEEMS TO RECEIVE LESS SCRUTINY. THERE IS A TENDENCY IN THE AGENCY TO ALLOCATE ITS INSPECTION RESOURCES BASED ON THE LEVEL OF EMPLOYMENT AT ANY GIVEN MINE. THIS APPROACH IS NONSENSE. THE APPLICATION OF RESOURCES SHOULD BE IN DIRECT RELATIONSHIP TO POTENTIAL RISKS AND THE RECORD OF SAFETY PERFORMANCE OF EACH CLASS OF MINE. ANY OTHER SYSTEM IGNORES THE MOST ELEMENTAL RULES OF EFFICIENCY, A DISREGARD DIFFICULT TO SUPPORT EVEN BY BUREAUCRATIC STANDARDS.

WHAT IS IT THAT MANAGEMENT SHOULD DO?

IT SHOULD HAVE A FIRM COMMITMENT TO THE SAFETY PHILOSOPHY WHICH WE HAVE DISCUSSED.

IT SHOULD BE PREPARED TO WORK COOPERATIVELY WITH ANYBODY AND EVERYBODY WHO CAN HELP ACCOMPLISH THE SAFETY TASK. THIS MEANS UNIONS, THE GOVERNMENT, ACADEMIC INSTITUTIONS, MANUFACTURERS, ETC. THIS EFFORT SHOULD BE SINCERE AND IT SHOULD BE ONGOING.

IT SHOULD BE PREPARED TO TAKE UNPOPULAR STANDS AND STAND BY THEM WHERE SAFETY IS INVOLVED. WE SEE MANY INSTANCES WHERE AN EMPLOYER, IN THE INTEREST OF LABOR PEACE, OR GETTING ALONG WITH MSHA OR SOME OTHER IMMEDIATELY DESIRABLE REASON AGREES TO CONDONE AN UNSAFE ACT OR PRACTICE. THIS IS WRONG. MORE IMPORTANTLY, IT IS UNSAFE.

THE UNION HAS A UNIQUE ROLE TO PLAY. IT REPRESENTS THE WORKERS AND MUST BOTH LEGALLY AND MORALLY PROTECT THEIR INTERESTS. BUT, IN THE SAFETY AREA THE JOB OF THE TRADE UNION IS VERY SIMPLE --- IT HAS TO HELP PROTECT LIVES. ANY OTHER OBJECTIVE MUST BE SUBORDINATED TO THAT END. IN MANY CASES, WE BELIEVE THAT THE UMWA HAS DONE THIS. IT HAS WORKED VERY CLOSELY WITH US ON A NUMBER OF SAFETY ISSUES, AND WE BELIEVE THAT THE CAUSE OF SAFETY HAS BEEN ADVANCED BY THESE EFFORTS.

ON THE OTHER HAND, THE UMWA TENDS TO WAVE THE BLOODY SHIRT, TO SEE A DIMINUTION OF SAFETY WHERE THERE IS NONE, OR TO OPPOSE NEW IDEAS WHICH MIGHT HELP SAFETY SIMPLY BECAUSE OF RESISTANCE TO CHANGE. MORE OMINOUSLY, WE ALL TOO OFTEN SEE A DISTURBING PATTERN OF UNION UNWILLINGNESS TO REMEDY, OR TACIT

APPROVAL OF UNSAFE ACTS ON THE PART OF COAL MINERS. FOR EXAMPLE, THE ACT OF SMOKING UNDERGROUND CAN NEVER BE DEFENDED. YET, WE SEE ARBITRATION CASES WHERE THE UNION DEFENDS A PERSON SMOKING UNDERGROUND. WE EVEN HAVE SEEN ARBITRATION OF CASES WHERE A MINER WAS DISCIPLINED FOR BREAKING A SAFETY RULE RESULTING IN INJURY TO ANOTHER. IN INSTANCES LIKE THIS THEY CAN'T HAVE IT BOTH WAYS --- THEY ARE EITHER A PART OF THE SAFETY PROBLEM OR THE SAFETY SOLUTION.

WE DO NOT MEAN TO INFER THAT THE ROLE OF THE UNION IS TO PASSIVELY ACCEPT EVERY MANAGEMENT JUDGMENT IN THE SAFETY AREA. QUITE THE CONTRARY, THE UNION'S BASIC ROLE IS TO BRING ITS OWN PERSPECTIVES TO THE ATTENTION OF MANAGEMENT, TO CONFRONT MANAGEMENT WHERE APPROPRIATE, TO PROMOTE PROPER HEALTH AND SAFETY REGULATIONS AND TO SUPPORT THE DEVELOPMENT OF SAFER MINING TECHNIQUES. BUT, SUCH ACTIVITY SHOULD NOT FALL WITHIN THE PARAMETERS OF NORMAL ADVERSARIAL LABOR MANAGEMENT RELATIONSHIPS. THE OBJECTIVE IS TO SAVE LIVES, NOT TO SCORE POINTS.

NOW FOR THE GOVERNMENT.

IT HAS BEEN ARGUED THAT THE BASIC PART OF A HEALTH AND SAFETY PROGRAM IS REGULATION AND ENFORCEMENT. CERTAINLY, THIS IS THE STATED VIEW OF THE UMWA,

THE CONGRESS AND MOST OF THE PEOPLE AT MSHA. WHILE AGREEING THAT THERE IS A ROLE --- INDEED A MAJOR ROLE --- FOR GOVERNMENT, WE WOULD ARGUE THAT THE CURRENT EMPHASIS ON ENFORCEMENT IS NOT WHAT IS NEEDED FOR FUTURE IMPROVEMENTS IN COAL MINE HEALTH AND SAFETY. OUR CONCLUSION IS BASED UPON TWO PRIMARY POINTS.

FIRST, AS SHOWN ON TABLE I, THERE WAS A STEADY IMPROVEMENT IN THE HEALTH AND SAFETY RECORD BEFORE THE PASSAGE OF THE COAL MINE HEALTH AND SAFETY ACT OF 1969. THIS WOULD INDICATE THAT, FOR WHATEVER REASON, THE INDUSTRY, OR AT LEAST A STATISTICALLY CONTROLLING PART OF IT, WAS REALIZING THE BENEFIT OF ITS OWN HEALTH AND SAFETY INITIATIVES.

THIS MAKES SENSE. THE COST OF ACCIDENTS IN BOTH HUMAN AND FINANCIAL TERMS IS UNACCEPTABLE TO A MODERN COAL MINING COMPANY. FORGETTING THE HUMAN COST INVOLVED, IT IS ABSOLUTELY ABSURD TO BELIEVE THAT ANY MODERN MANAGER WOULD PUT AT RISK MILLIONS OF DOLLARS OF CAPITAL INVESTMENT, HARD TO OBTAIN SUPPLY CONTRACTS AND THE EVER PRESENT SPECTER OF PERVASIVE GOVERNMENT CONTROL JUST TO ENJOY THE EPHEMERAL BENEFITS OF AN UNSAFE COAL MINE.

SECOND, MSHA'S ENFORCEMENT PROGRAM AND THE CONFORMITY TO IT OF A SUBSTANTIAL ELEMENT OF THE COAL INDUSTRY HAVE REACHED A STAGE OF MATURITY AT WHICH CONTINUATION OF THE HISTORICAL EMPHASIS CONSTITUTES A MISALLOCATIION OF RESOURCES. THERE IS A SIZEABLE PORTION OF THE INDUSTRY WHICH, THROUGH APPLIED MANAGEMENT SAFETY PHILOSOPHY, HAS ESTABLISHED A LEVEL OF SAFETY PERFORMANCE WHICH IS NOT IMPROVED BY MSHA'S ENFORCEMENT PROGRAM --- AND, IN ACTUALITY, MAY BE HAMPERED BY THE INTERRUPTION OF ROUTINE.

FROM THE PERSPECTIVE OF HISTORY, MUCH HAS BEEN ACCOMPLISHED IN COAL MINE HEALTH AND SAFETY. IT IS A RECORD THAT ANY INDUSTRY COULD REASONABLY BE EXPECTED TO VIEW WITH PRIDE. BUT, OUR IMPROVEMENT HAS ONLY BEEN IN REDUCING THE NUMBER OF PEOPLE WHO HAVE BEEN KILLED IN THE PRODUCTION OF COAL AND THE ONLY ACCEPTABLE END RESULT IS THE TOTAL ELIMINATION OF FATALITIES. THIS EFFORT MUST NOW OCCUPY THE ATTENTION OF ALL THOSE CONCERNED WITH SAFETY IN COAL MINES.

WE HAVE SUGGESTED THAT WHAT HAS BEEN DONE MAY WELL BE MARKEDLY DIFFERENT THAN NOW WHAT MUST BE DONE. THE TOOLS OF ENFORCEMENT, REGULATION AND ADVERSARIAL RELATIONSHIPS MUST NOW CLEARLY GIVE WAY TO A COMBINED EFFORT TO ATTACK AND OVERCOME THOSE THINGS WHICH STILL CAUSE COAL MINE FATALITIES.

TABLE I

U.S. Coal Mine Fatalities and Fatality Incidence Rates, 1970 - 1985

Year	Million Employee Hours Worked	Fatalities	Fatality Incidence Rate (1)
1970	260.2	260	.20
1971	254.1	181	.14
1972	267.5	156	.12
1973	277.6	132	.10
1974	296.8	133	.09
1975	368.2	155	.08
1976	383.2	141	.07
1977	390.6	139	.07
1978	386.8	106	.05
1979	441.8	144	.07
1980	434.0	133	.06
1981	403.0	153	.08
1982	398.9	122	.06
1983	318.8	67	.04
1984	344.7	118	.07
1985	326.3	63	.04

Incident Rate is per 200,000 hours worked.

Data Source: Injury Experience in Coal Mining, 1970 - 1985, U.S. Dept. of Labor, MSHA

NOTE: Data for 1983, '84 and '85 exclude contractor data.

TABLE II

Comparison of Respirable Dust Standards for Coal Mines Between United States, United Kingdom, and West Germany

United States Standard:

Average full shift exposure of most highly exposed miner on each working section ----------2.0 mg/m^3

Intake air approaching working sections, and "Part 90" miners ----------1.0 mg/m^3

United Kingdom Standard:

At point in return airway, 70 meters from end of longwall face ----------7.0 mg/m^3
(Note: this equates to an average concentration of 3.8 mg/m^3 along the face.)

In development headings ----------5.0 mg/m^3

West Germany Standard:

Average concentration along longwall face ----------12.0 mg/m^3

Maximum average exposure of miners over 5-year period as determined by record of administrative controls--------6.5 mg/m^3

NOTES: (1) Respirable dust exposure of U.S. coal miners, as determined by the average of some 422,000 samples collected pursuant to mandatory standards during the 1981-'85 period, was about 1.0 mg/m^3.

(2) U.S., Great Britain, and West Germany Standards are not directly comparable on a numerical basis because of differences in required sample collection procedures.

TABLE III

Fatalities Occurring Underground in U.S. Bituminous Coal Mines of Various Size Ranges, Per Million Hours Worked Underground, 1970 - 1982 Inclusive

Year	Mines Producing Less Than 100,000 Tons	Mines Producing 100,000 to 499,999 Tons	Mines Producing 500,000 or More Tons
1970	1.862	1.964	0.683
1971	1.751	0.841	0.587
1972	1.834	0.549	0.613
1973	1.470	0.575	0.429
1974	1.260	0.486	0.372
1975	0.932	0.487	0.337
1976	1.459	0.407	0.255
1977	0.837	0.430	0.207
1978	0.666	0.343	0.179
1979	1.066	0.458	0.274
1980	0.839	0.475	0.238
1981	1.869	0.514	0.171
1982	1.020	0.429	0.214

TABLE IV

Coal Mining Fatalities
U.S. Totals; BCOA Member Totals

Year	U.S. Total	BCOA Total
1983	70	27
1984	126	19
1985	67	11
1986*	72	16

* through August

Note: During this period, BCOA Member mines produced more than one-half the underground coal produced in the United States.

TABLE V

AGE DISTRIBUTION OF UMWA WORKFORCE, 1970, 1975 AND 1980

	PERCENT OF WORKERS		
AGE GROUP	1970*	1975**	1980**
17-19	1.1	2.7	0.5
20-24	8.3	17.3	13.0
25-29	10.5	18.0	20.3
30-34	9.8	12.4	18.1
35-39	9.2	9.5	12.5
40-44	12.3	7.4	9.9
45-49	14.8	8.6	7.2
50-54	15.2	9.8	8.0
55-59	12.2	8.4	7.0
60-64	5.6	5.1	3.2
65-69	0.8	0.7	0.2
70 +	0.2	0.1	0.1
Total	100.0%	100.0%	100.0%
Average age	43	37	37
Median age	44	34	33
% Below 30	19.9%	38.0%	33.8%
% Below 35	29.7%	50.4%	51.9%
% Below 40	38.9%	59.9%	64.4%

Source: * UMWA Health and Retirement Funds

** BCOA